AGRICULTURAL LABOR SUPPLY AND THE H–2A PROGRAM

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AGRICULTURAL LABOR SUPPLY AND THE H-2A PROGRAM

MONDAY, MARCH 21, 1988

House of Representatives,
Subcommittee on Regulation and
Business Opportunities,
Committee on Small Business,
Portland, OR.

The subcommittee met, pursuant to notice, at 9:30 a.m. in City Hall, Portland, OR, Hon. Ron Wyden (chairman of the subcommittee) presiding.

Present: Chairman Wyden and Representative DeFazio.

Chairman Wyden. The subcommittee will come to order. As Chair of the House Small Business Subcommittee on Regulation and Business Opportunities, I am very pleased today to convene this important oversight hearing on the Immigration Reform and Control Act of 1986.

At today's hearing, which is the second that our subcommittee has held on immigration reform, we are going to be focusing on the administration of this important statute.

Nobody ever said immigration reform would be easy. But today, the job is more difficult because the Federal agencies that are charged with implementing this law have sent mixed and contradictory messages, and adopted incomprehensible regulations.

Many Oregon farmers faced with labor shortages, burgeoning paperwork, and regulations which appear to change from day to day, are telling me that unless things change they are going to plow their fields under and leave agriculture.

Last year, our berry, fruit, and nut crops were worth $192 million to our State's economy. I, for one, am not going to sit idly by and watch this vital sector be sacrificed to Federal redtape and confusion.

The Immigration Reform and Control Act was signed on November 6, 1986. Right after the bill was signed, I went to work in an effort to bring about clear and coherent regulations for carrying out this law. But it was an uphill effort.

The first challenge dealt with verification procedures for workers documents at the time they were hired.

Employers were required to verify on a special form known as the I-9 that these documents appeared to be genuine.

The Immigration and Naturalization Service, however, dragged their feet in getting these forms out in early 1987; and in late Spring, I stood in the berry fields of east Multnomah County in my district, and handed the form out personally to my constituents who couldn't obtain them from the local immigration office.

The most appalling part of this was that the I-9 regulations required—2 weeks before I started handing those forms out in the field—that employers fill out those forms for each employee they had hired since the fall of 1986.

Similar problems occurred with another key part of the bill known as the Special Agricultural Worker, or SAW Program. With this program, Congress intended that laborers who had worked in Oregon before would be able to come back and work in our State quickly and easily.

But in May 1987, with our farmers desperate for labor, those Special Agricultural Workers were stuck in Mexico because the Immigration and Naturalization Service was requiring more proof of their previous employment than Congress had ever intended.

Our subcommittee held a hearing on the SAW problem where Oregon farmers reported that not one single SAW applicant had been able to work their way through the paperwork maze and return to Oregon.

We learned at that hearing that farm workers had to fill out forms in Mexico, track down previous employers in Oregon, for often nonexistent employment records, and then travel to the closest INS office to finish the application.

The first SAW rules force potential workers to bounce back and forth so much they probably should have been issued with frequent flyer programs.

Along with a number of my colleagues in the Congress, I worked to change these SAW rules so that workers could—in line with the intent of Congress—enter the country if they showed some evidence that they could be legalized.

A particular concern of the subcommittee today is another program known as H-2A. The H-2A Program was designed as an emergency measure to allow our employers to obtain foreign workers on a temporary basis.

We will hear today from Oregon farmers that just such an emergency exists, and they make a compelling case, in my view, that the H-2A Program is already an administrative nightmare.

This program is critical because, as of now, H-2A is the principal tool for our farmers to get the workers they need legally.

If the H-2A Program is the only vehicle around, it is time to make sure that vehicle is drivable. It is telling that there is as yet not a single H-2A application in the State of Oregon according to experts that have briefed my staff.

As with the lack of SAW applications in the spring of 1987, the lack of Oregon H-2A applications today tells me that already there are serious administrative problems with the program.

I have asked representatives from the Federal offices responsible for implementing the H-2A Program here to tell the subcommittee who is in charge of this program, and what they are doing to make it work for Oregon agriculture.

Members of growers' associations, farm workers' groups, and other involved organizations are here to offer practical suggestions for addressing our State's agricultural needs.

I have read the testimony that was given to the subcommittee; and I want to commend our Oregon witnesses for what I think are some very practical suggestions for changes that could be made to make immigration policy work for our State.

The Federal agency charged with implementing the immigration law—specifically the Immigration and Naturalization Service, the Department of Labor, and the Department of Agriculture—must act and implement some of these changes so that our farm workers and our farm owners are not the casualties of bureaucracy.

I am looking forward to our witnesses, but first I want to recognize my friend and very valuable Member of the Oregon congressional delegation, Peter DeFazio.

It is really extraordinary to see a newcomer to Congress can accomplish so much, and Peter, I just appreciate your being here, and all the work that you have done on agriculture and a whole host of other issues.

Mr. DeFazio. Thank you, Mr. Chairman. As everyone well knows, the Fourth District has long been famous across the Nation for its timber, but we have got to remember—and I always do remember—that agriculture is number two, right there behind timber.

It is essential in my district. We have had some of the problems that people in the valley and up here in the northern part of the State have experienced.

It is always amazing to me that Congress can pass a law that is maybe one or two sentences long, and about 6 or 8, or 12 months later the bureaucracy comes out with regulations to implement the one sentence, and they are usually somewhere in the vicinity of 8 or 10 inches high.

Then, of course, there are the forms that you have to file to comply with the 8 or 10 inches. I am not saying the immigration law was that clear or that simple, but I think we do have a problem here with a bureaucracy that has made it more complex than it needed to be; made it less accessible, less understandable.

I welcome the chairman's leadership on this issue, and look forward to receiving some testimony that will help us straighten them out back in Washington so that we can get the needed help for this year's growing season.

Thank you, Mr. Chairman.

Chairman Wyden. Well, the gentleman states it very well, and I note quite a bit briefer than I did. I appreciate his leadership.

Mr. DeFazio. Well, we do have to catch a plane, Mr. Chairman.

Chairman Wyden. The gentleman makes an additional important point.

Our first panel: Mr. Jim Buck, Administrator, Northern Region, Immigration and Naturalization Service; Mr. Jim Bailey, Assistant Administrator, Office of Employment and Training, region X, United States Department of Labor; Mr. Raymond Hancock, Deputy Administrator for Operations, Natural Agricultural Statistics Service, USDA.

Gentlemen, if you will come up. You represent the three principal agencies working in this area. We welcome you, and appreciate the cooperation that you have given to the subcommittee.

Gentlemen, we will make a copy of your prepared remarks a part of the record in their entirety. So, if you would be willing to summarize your views in 5 minutes, that will afford us some time for questions.

Let us begin with you, Mr. Buck.

Welcome.

TESTIMONY OF JAMES BUCK, REGIONAL COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. Buck. Thank you, Mr. Chairman and members of the subcommittee.

I am pleased to have the opportunity to be here today to discuss the H-2A Program. I would like to submit a copy of my testimony for the record, and would be pleased to take questions following my brief statement.

The H-2A Program was created by the Immigration Reform and Control Act. Before this program was created, agricultural workers were admitted to the United States under the regulations as H-2A workers in a similar fashion as nonagricultural workers.

Employers were required to obtain a labor certification from the Department of Labor to establish, one, that there were not sufficient American workers to perform the proposed employment, and two, that the working conditions were such that American workers similarly employed were not adversely effected.

The employer then had to file a petition with INS to establish the aliens to be hired qualified for the employment.

Section 301 of the Immigration Reform and Control Act separated agricultural employment from the H-2 Program, and established the H-2A Program specifically for such agricultural employment, in addition to modifying applicable rule.

There were three basic reasons for this change. The first was to streamline parts of the labor certification process and make the H-2A Program more responsive to the needs of agriculture.

The second was to enhance provisions meant to ensure that foreign agricultural workers were imported only where qualified, willing, and able American workers were not available.

The third was to enhance labor standards protections.

The H-2A Program became effective on June 1, 1987, with the simultaneous publication of interim rules by the Department of Labor and the Immigration and Naturalization Service.

The program has been in use since this day, although employers who started the process before June 1 were unaffected; and thus, last year many temporary agricultural workers were admitted as H-2 workers before and after June 1.

By last November, when much of the field work in many agricultural sectors had ended, labor certification had been granted to allow employers across the Nation to import over 13,000 foreign agricultural workers under the H-2A Program.

This was in addition to the workers admitted under the H-2 Program based on applications filed before June 1.

There are a number of examples of industries and employers who have used the H-2 and H-2A Programs with success.

One of the most prominent of these in the Northwest has been the Snake River Farmer's Association in Idaho, which has used the program to deal with a shortage of irrigators.

Sources within the agricultural industry have indicated a significant increase in employer interest in the H-2A Program during this past winter.

I think it is important to take a moment to look at the number of legal options available to the agricultural industry.

First of course, there has always been U.S. citizens and permanent residents. Second, the H-2 Program has, over the past years, provided thousands of workers to growers when there was a shortage of domestic labor.

Third, the H-2A Program was implemented last year as an additional option, designed to be most sensitive to agriculture's needs.

By November, scarce months after it went into effect, the additional 13,000 workers were admitted under H-2A.

Among the States which used the program, California, Arizona, Massachusetts, Connecticut, and Vermont, to name only a few.

The Department of Labor has noted that the employers in agriculture who had previously never used the H-2 Program filed H-2A applications.

This included applications by employers in the nursery, grape cultivation, dairy, poultry, and walnut industries.

Finally, in addition to these programs, growers have another source of legal labor under the SAW provisions of IRCA.

As of March 8, 1988, the INS and Department of State had received over 312,000 special agricultural worker applications. This was under the amnesty provisions of the Immigration Reform and Control Act of 1986.

It has been estimated that yearly there are 400,000 to 500,000 illegal workers in U.S. agriculture. If these figures are accurate, we are well over halfway to producing the legally authorized workers needed for this year's harvest.

It is too early to measure the overall effect of the H-2A Program due to its less than 1 year existence, and because during that same period of time the Service has been administering the short-term Special Agricultural Worker Program.

In the northwest, the uncertainty of how effective the program can be was further distorted by the timing and size of last year's harvest.

Additionally, analysts may not be fully able to calculate its effectiveness until after employer sanctions have been fully extended to all of agriculture.

As I previously indicated, the H-2A Program was a carefully crafted compromise meant to address many of the concerns of both the growers and organizations representing Americans who work in agriculture.

The program has only been in effect since June 1987. But many growers have expressed interest in it, and it appears it will grow to fulfill its intended role.

In closing, I would like to again thank you for this opportunity to discuss the H-2A Program in open forum. If you have any questions, I would be pleased to take them.

[Mr. Buck's statement may be found in the appendix.]

Chairman WYDEN. Thank you very much, Mr. Buck. Mr. Bailey.

TESTIMONY OF JAMES E. BAILEY, ASSOCIATE DIRECTOR, OFFICE OF TRAINING AND EMPLOYMENT SERVICES, SEATTLE REGIONAL OFFICE, U.S. DEPARTMENT OF LABOR

Mr. BAILEY. Mr. Chairman, Mr. DeFazio, on behalf of the Department of Labor, I would like to thank you for the opportunity to testify on the activities undertaken by our Seattle Regional Office to fulfill our responsibilities related to administration of the H-2A Program under the Immigration Reform and Control Act of 1986.

The Seattle Regional Office is responsible for H-2A Program activities in four States—Alaska, Idaho, Oregon, and Washington.

For some 15 years prior to 1986, we had not received a request from any of our States for labor certification for temporary agricultural workers, except for a program involving sheepherders, which operates primarily in Idaho.

In the fall of 1985, we were approached by representatives of the Snake River Farmer's Organization operating out of southern Idaho.

They expressed interest in the possibility of bringing in temporary nonimmigrant alien agricultural workers under the H-2A Program.

We worked with the Snake River Organization over a period of several months, assisted by the Idaho Department of Employment, to develop a program which served the needs of the growers while at the same time meeting the regulatory requirement, and taking into consideration input from workers advocate organizations.

During the 1986 season, some 217 employers requests for certification were approved, covering 1,035 irrigator positions.

During the 1987 season, a total of 358 certifications were granted, covering 1,841 workers.

During the seasons of 1986 and 1987, staff from our regional office met with many grower organizations in the States of Washington and Oregon. We explained to them the benefits and requirements of the H-2 Program.

Only the Idaho program operated during this 2-year period of time. With the passage of the Immigration Reform and Control Act [IRCA], a resurgence of interest on the part of the farming community in the Northwest in the new H-2A Program resulted in our department in conjunction with the Immigration and Naturalization Service, State employment security agencies, and State departments of agriculture, once again meeting with many farm organizations, primarily in the States of Oregon and Washington.

While it appeared likely that H-2A applications would be received during the 1987 season, none were filed.

As we begin the 1988 season, the only applications received to date, which are being processed for certification, as in the past 2 years, have been from members of the Snake River Farmer's Association in Idaho.

In addition, a small group of fruit and vegetable growers in the Walla Walla area of Eastern Washington filed applications covering some 200 workers.

However, those applications contained deficiencies, and have been returned to the employers for modification. It is my understanding that the region's experience since the H-2A Program became effective June 1, 1987, parallels the national experience.

While a great deal of interest has been expressed by employers, very few have actually filed applications for certification.

Certifications nationally are running about the same as they have in previous years, between 21,000 and 22,000 workers.

It appears that it is too early to tell how great an impact IRCA will have upon agricultural employers. This will probably become clearer when the employer sanctions provisions of the law take effect for producers of perishable commodities in December of this year.

In order to comply with the congressional mandate in IRCA, the Department of Labor promulgated interim final regulations for the H-2A Program on June 1, 1987.

With your permission, Mr. Chairman, the rest of my testimony deals with the intricacies of those requirements. If it is OK, I will just submit my written testimony and then be available for any questions that you may ask.

[Mr. Bailey's statement may be found in the appendix.]

Chairman WYDEN. Without objection, that will be done. We thank you for your cooperation, Mr. Bailey.

Mr. Hancock.

TESTIMONY OF RAYMOND R. HANCOCK, DEPUTY ADMINISTRATOR FOR OPERATIONS, NATIONAL AGRICULTURAL STATISTICS SERVICE [NASS], U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY PAUL WILLIAMSON, STATE STATISTICIAN

Mr. HANCOCK. Thank you, Mr. Chairman. I also would like to review just the testimony that we've provided for the record, and I would like to just highlight a few points.

To start with, though, first I would like to introduce our State statistician here in Oregon, Paul Williamson, who I had accompanied here. Paul, would you stand up and be identified back there?

Chairman WYDEN. Perhaps you would like him to accompany you to the witness table.

Mr. HANCOCK. In case questions come up that are concerned with Oregon, I would be delighted that Paul step in and answer them, because he is closer to the Oregon scene than I am.

Chairman WYDEN. All right.

Mr. HANCOCK. So, let me highlight just a few things.

I am with the National Agriculture Statistics Service, which is the arm of the Department of Agriculture. It is responsible for compiling the basic agricultural statistics in the United States.

As a part of that, we are also involved in collecting information on farm wage rates, number of workers on farms, self employed farmers' number of workers on the farm.

That is one part of our total charge of agricultural statistics. So, let me deal with just what we do in that area primarily and not the whole program.

The NASS—and I will use NASS to represent National Agricultural Statistics—quarterly agricultural labor and wage rate data series provides estimates of the total number of persons doing farm work during specific survey weeks of the month.

We do four quarterly surveys a year. Three of those surveys include all States. The January survey includes only seven States.

We publish the data for the United States in the 18 regions, and when I say 18 regions, three of the States are published independently.

One of our weaknesses is that the data is not adequate to publish detailed State data for all States, and this is one of the concerns that I think you should surface at this session.

A little bit of history of our program. We have been around and collecting statistics for over 125 years. In fact, we are celebrating our 125th anniversary of collecting basic agriculture statistics.

The department was formed in 1862, and we began our program in 1863.

So, we have a long history, and we have a long history of collecting wage rate data. I will leave out part of the history, but in 1982 we had a very good program. But because of program cutbacks—funding is the right word—we reduced sample, and it was really designed to give national information which could be used to tell what was happening nationally.

That was carried on in 1982 and 1983. In 1984, through the cooperation of the Department, the policy makers, and the Department of Labor, funding was restored that gave us the current program. But it is still not at the level that we had one time previously.

Now, let me mention a couple of other things. When I say we published wage rate data by regions, we actually publish Oregon and Washington data together.

The reason we publish the data together is because our sample is not large enough to measure what is happening in each State individually.

A couple of other points.

We do get very good cooperation from the producers on our labor survey. We collect most of the data by telephone. Some of it is by personal interview; some by mail questionnaires.

But, essentially, 90 to 95 percent of the producers cooperate and provide information, or let us know what is happening on their farm during the survey.

That is the number for Oregon. There are some States, if you look nationwide, that are not quite that high.

Some weaknesses of our data. Our current estimates, like the number of farm laborers—number of workers working on farms—even though we collapse it down into regions, still has a CV or coefficient variation of 10 to 20 percent, which is very high.

Our farm wage rates CV is less than that, but it is still not adequate to get down and publish the State data.

Mr. Chairman, with that, I think I will stop. Any questions of concern on where we should go in this area, we certainly welcome them, and address them for you.

[Mr. Hancock's statement and response to chairman's request for additional information may be found in the appendix.]

Chairman Wyden. Well, thank you very much, Mr. Hancock. I appreciate all of you who have been brief.

Let me begin with you, Mr. Buck. You heard my opening testimony, particularly concerned about the H-2A Program, because that is regarded as really the only vehicle around in terms of getting workers that are legal, and we have got to make sure that if it is the only vehicle around that it is a drivable one.

Now, am I correct in terms of what I have been told that there have been no H-2A applications in the area of perishable crops and seasonal crops in Oregon?

Mr. BUCK. To my knowledge, there have been no applications filed in Oregon. I have learned last week at a hearing that was conducted in Salem that several people are interested. Some have filed applications that have been returned for additional work, I believe, possibly.

Talking with people after the meeting that was held in Salem last week, we also learned that many people will be applying for an H-2A certification next year.

The reason that they are not this year is because the sanctions portion of the law is not effective until December of this year, after this growing season.

So, it seems to be an economic matter of why bother to put in the H-2 Program this year when it is not going to be necessary as far as the enforcement is concerned.

Chairman WYDEN. I guess what I want to know, if this is the principal vehicle, and nobody is applying for it, isn't that an indication to you that there are some serious problems out there?

We know we are going to have a shortage. The Oregon Strawberry Commission, for example, has already given us a signal of problems—40 percent of the workers were illegal.

Isn't the fact that nobody has been able to get through the H-2A application process a sign to you that there are some problems?

You even said some people have filed one and had it returned. That statistic alone just conjures up for me what we had with that SAW problem when I held my hearing last year.

We knew that the SAW Program was to be the principal vehicle then. Nobody was able to work their way through that paper work maze.

I am concerned that we are going to have the same problem with the major vehicle this year. When I see nobody has applied it at this point, and been able to make it work, I think that is a sign that there is a problem.

Mr. BUCK. Congressman, I am very sensitive to agriculture's need in this area. It is part of my region. Looking at the H-2 Program nationwide, we have had sample cases, test cases, where the H-2 application has been filed; we had 13,000 workers that came in under the H-2A Program last year.

It is a good program, and it does work. It is not that complicated. We have gone to great lengths to streamline it. The Departments of Labor, Immigration, and Agriculture have worked together to try to make this a very noncomplicated methodology for bringing workers in.

I would not want to take the H-2A Program in a vacuum. It is not the only one, it is one of several. Using legal domestic workers is the first choice of the labor force.

Using the SAW provision—which you have played a role in trying to perfect and put in place—we already have over 312,000 applications, most of which are going to be approved.

That 312,000 out of an estimated 400,000 that is used throughout the country surely is going to meet most of the need of the growers across the country.

It may be that there are some geographical differences. Of course, most of those people may want to live in the warmer climates of Arizona, California, or Texas, rather than come here.

Chairman WYDEN. Are you saying that because of geographical differences our farmers should retire from agriculture and go to Arizona?

Mr. HANCOCK. No; I do not believe that you are going to have to do that either, Congressman.

If I may share with you some figures that we came up with during some research conducted here with the University of Oregon.

Last year, during the shortage, I spent most of my time during the strawberry season, the cherry harvesting season, and the apple harvesting season in the northwest region—Oregon, Washington, and Idaho.

I watched with a keen eye toward the data of what really was taking place when there appeared to be a labor shortage. It was on the national news for 2 weeks in a row about the labor shortage.

In Oregon, as an example, in the strawberry fields, the amount of fruit harvested last year was 44 percent higher than in 1986, which shows that there was too much crop; the price began to fall late in the season because of the abundant crop.

The crop was actually harvested, and farmers ended up making a significant profit on the strawberries. In the cherries, it was a 38 percent higher production rate; and in apples, 61 percent higher than the previous year.

These facts, these figures lead me to believe that there really was not a shortage of traditional labor. But what we actually saw was a very abundant crop—very fortunate for the growers.

They made more profit last year because of the abundant crop. In terms of the gross number of workers, I really do not believe that there was that much of a shortage.

I do not think that there will be a severe shortage this year.

Chairman WYDEN. But the fact of the matter is that a significant amount of the crop rotted because there were not enough workers, and that is the bottom line.

I want to make sure there are enough workers this year. Now, you have said that the Snake River Grower's Association was an example of a success story for H-2A. But my understanding is that this was irrigation work; and that is far less time-sensitive than strawberries or other perishables, isn't that correct?

Mr. HANCOCK. In the Snake River Growers' situation they are not as sensitive to strawberries, or cherries, or apples. But in other parts of the country that use the H-2 workers—on the east coast, for instance—their crops are just as time sensitive as strawberries, apples, and field crops.

Chairman WYDEN. Well, what would you propose to make H-2A more flexible for crops—crops vital to Oregon's agricultural sector—with short or sensitive growing seasons?

Mr. HANCOCK. Excuse me, Congressman.

Mr. BAILEY. Mr. Congressman, it might be appropriate for me to interject here since our department receives these certification requests, and we are responsible for sending back the ones that are deficient.

It is our regulations, really, that you are talking about.

We have talked with our grower organizations over the last 2 years in Washington and Oregon that represent hundreds, if not thousands, of growers in the area.

I think last year was a very unusual season. I guess it is always unusual in agriculture. But there were some unique problems dealing with the weather that caused the strawberries and cherry crops to come in earlier, before school was out, before the workers that normally move up from California had moved up.

Frankly, from fear among the undocumented workers that if they come north that there will not be jobs for them to engage in.

So, for all those reasons, and maybe some others, there was delay in the workers coming north. I think the reason that we have not received applications has very little to do with the procedures, but it has a lot to do with just the overall economics.

The protections built into this law for American workers make it more expensive to engage in the H-2A Program, than it does to continue to use undocumented workers.

This law in our regulations requires certain rates be paid, as published by the Department of Agriculture.

It is expensive. It is more expensive than using undocumented workers. It requires that the housing be inspected, and meet Federal standards. It requires that meals, transportation, workers compensation, tools, a contract that guarantees three fourths of the wages included in the contract be paid, and there are others.

For your information, this is hot off the press. We just published this brochure for growers which explains all of this that I have told you. It is on the back table. We would be happy to make more of a supply available.

But I think what it boils down to is the law requires and the regulations spell out that we expedite the handling of this process.

For every application that we have received, we have struggled mightily and returned as required within several days of receipt, either the approval or the reasons for the denial of the application.

We have emergency provisions in the cases of perishable crops that we can speed up the processing of these applications, and we stand ready to do that.

For the first-time users there is another provision that cuts the time periods in half. So, the processing of paperwork of these applications has in no way, as far as we know, impeded the process of them.

It is the protections that are built into the law for the American worker that cost more for the American farmer.

Chairman WYDEN. Well, I just do not share your view that the procedures are not the source of the problem, because I think very much procedures are.

Let me ask you about a couple of changes in particular which I think might alleviate some of the difficulty. You mentioned the question of being able to change the regulations in an emergency situation.

Our farmers are telling me that they already are facing that kind of emergency. They are going to be short thousands of workers.

When we find that problem—and I think we are going to—in Oregon, this year, what is going to constitute the definition of an emergency, and what would then trigger a different set of procedures so that workers could get those workers when they are in a crunch?

Mr. BAILEY. Well, I guess my favorite answer would be that we will know it when we see it. We do not regard procrastination, for instance, as an emergency.

Chairman WYDEN. Well, again, I just want to emphasize that is the heart of the problem.

Our farmers are trying to plan. They need some certainty. If we operate under a climate where the Federal Government says we will know something when we see it, that is not giving our farmers what they need to go out and plan their work.

Mr. BAILEY. Well, Mr. Congressman, I am sure you understand, having been one of the people who helped get this law through, it has two parts. It is to ensure that we provide an adequate workforce to the employers, but it is also to assure that we provide protections to the American worker.

We could fund all of these things, or approve all of these processes in 1 day, but then there is no protection for the American worker, which I am sure you are also in favor of.

The time that we take is to recruit American workers. It is not paper processing. It is to allow us to run the interstate recruitment process, and to try to allow American workers to maximize employment of Americans in these jobs first.

So, we can speed it up as fast as you would like it.

Chairman WYDEN. Well, I am going to hold the record open on this point. I would like the department to submit for the record what would constitute an emergency under the H-2A Program so that the Regional Administrator could make changes in the H-2A Program, which I have a feeling we are going to need this spring.

Now one suggestion that I think sounds like a sensible one would be reducing the 60-day requirement for submitting H-2A requests to the Department of Labor.

What our report is, is that it is difficult, if not impossible, to determine the precise day that laborers are needed.

They have gone on to say that if there could be a change in the timeframe, making it a shorter timeframe—this was something also brought up by the Oregon Department of Agriculture—that might reduce some of the problems that they would face in dealing with projecting of labor requirements and workers.

Would the Department support something like that?

Mr. BAILEY. The first-time user is allowed to cut these times in half, down to 30 days. Under the emergency provisions for perishable crop, there is no limit to how much we could cut it back, only to assure us that if there are American workers available that we have allowed those workers to participate in those jobs.

The time periods were cut from the H-2 Program to the H-2A Program from 90 days to 60 days, and understand that part of that 60 days is to allow the American farmer time to recruit his alien worker.

We approve this certification 20 days before the date of need. So, 20 days of the 60 days is farmer's time, to allow him to go out and do his own recruitment.

Chairman WYDEN. With respect to the change in the 60-day requirement, that would be the kind of thing that I will get back in writing and might be changed as part of an emergency situation.

Mr. BAILEY. We will identify for you what we would feel constitutes an emergency.

Chairman WYDEN. And how you will plan to handle it.

That would be helpful. One question for the gentleman from the Department of Agriculture, and then I want to let my colleague ask some questions.

Again, one of the ideas that has been advanced is the idea of restructuring wage determination on H-2A. As I understand it, it is done a number of times a year—three or four—and that many farmers feel that this misses the high season in terms of employment in their crops, and then you do not get an accurate picture of wages.

One of the things that has been proposed—again, the Oregon Department of Agriculture has taken the lead on this—is the idea that something could be done so that surveys could be on a monthly basis. Then you can deal with this averaging question in a different sort of way.

Is that the kind of thing that the Department would be receptive to as a way to help the farmers?

Mr. HANCOCK. Mr. Chairman, I appreciate your asking that question.

It is really a good question in the sense, if we had a monthly, say, farm labor survey carried out nationwide, then you would have data for Oregon, and the other States would have data for their States that reflect what is actually happening better than our current system.

The drawback to it is the cost. It does cost quite a bit more than say our current system, and one of the weaknesses of our current system is that we do not have enough resources to do a job that gives you good State data.

Chairman WYDEN. Well, why don't you have the Department submit for the record the comparison of costs under something like this approach, which I think would help the farmer, rather than the current kind of system, and let us dig into that?

It would seem to me that maybe you could hold the cost down by doing a short analysis on a monthly basis, rather than a more involved process three or four times a year.

But I respect your point that there may be costs involved here. Submit for us, for the record, the differences in cost between the two approaches.

Mr. HANCOCK. May I just give you a rough ballpark figure to work with today?

Chairman WYDEN. Sure.

Mr. HANCOCK. If we took our current quarterly survey and made it so it would give you good State estimates, it would cost us $2 million more a year.

To go through monthly estimates—our staff has given me some numbers that go up to $7 or $8 million. I would question that, and think it would be more like $3 or $4 million.

From a statistician's viewpoint, we would not want to jump in and say that we would do that immediately. We would want to phase it in over a couple of years' time period to make sure we needed the resources, and that we could make it work properly.

Chairman WYDEN. I gather from your initial testimony, though, you favor some changes already with respect to the way wage determinations are calculated for H-2A?

Mr. HANCOCK. The major change we would like—we feel it is needed from a producer's standpoint or, say, each State—is that we really need State wage rate data, rather than the regional data that we are publishing currently.

The weaknesses of what we are publishing currently is that Oregon data is combined with Washington. Historically, the wage rate in Washington has been slightly higher than the wage rate in Oregon.

It is associated a little bit probably with their apple picking—the greater volume there of the piece-rate work.

So, when you put those two States together, and you get an adverse wage rate based on what we are publishing, then your Oregon producer has a higher adverse effect wage rate—let me get it right.

Chairman WYDEN. Yes; I appreciate your trying to make this English because it is esoteric.

Mr. HANCOCK. Yes; what we really, from a producer's viewpoint, need is State data.

Chairman WYDEN. Have you had difficulty getting that?

Mr. HANCOCK. We would not have difficulty in getting State data on a quarterly basis, like we are currently doing, because producers do cooperate very well on the survey.

The major producers recognize the importance of having good data. So, it would not be a problem from us going out and collecting the data.

Chairman WYDEN. Why isn't it being done now?

Mr. HANCOCK. Why isn't it being done right now?

Chairman WYDEN. Why isn't it?

Mr. HANCOCK. We do not have the funds or resources to put into the program.

Going back to 1981-82 is really when our program was reduced drastically.

Chairman WYDEN. Well, I am very interested in seeing the figures with respect to the cost of today's system on the quarterly approach, rather than a different kind of approach.

It would seem to me—and we are all sensitive to cost—that there ought to be a way to get a more responsible, true panorama of the Oregon wage picture than what we have.

Whether it is reducing the sample so that you could do it on a monthly basis rather than the large sample on a quarterly basis, let us work with you all on that because the Oregon farmers, and our Department of Agriculture, most are concerned that today the situation just does not measure.

The other thing that they have suggested, which seems like something we could do with more modest cost would be to do something that would be commodity specific. I mean, that information must be out there, isn't it?

Mr. HANCOCK. Nationally we would be faced with doing that commodity specific in a number of States. I can see like the strawberry procedures here, or the fruit producers, it certainly wanted commodity specific.

Ideally, that would be very good. From total cost nationwide I could see that ballooning. Let me do this. Can we come back to you, your committee, with a specific—I will say two or three options for your consideration.

We would be delighted to do that.

Chairman WYDEN. That is helpful. I appreciate your bringing that up. We want to make sure that we are not doing something that adds cost without benefits.

I am just not at all convinced that the present system really does give us an adequate profile of what is happening in the State.

There has certainly been a lot of confusion about it in the community, both from the standpoint of workers and owners.

I want some additional questions in a minute, but I would like to recognize my colleague for any questions he has at this time.

Mr. DEFAZIO. Well, I do not have a lot, Mr. Chairman. I am here mostly to learn about the problem today. But the wage, I am a little curious, again, on the setting of this.

The wage is set surveying both people who work on a piece-rate basis, and people who work on an hourly rate basis? I mean, those are lumped together and you come up with an average. Is that what you are telling me?

Mr. HANCOCK. Sir, actually, we do not survey the worker. We survey the employer, the establishment.

Mr. DEFAZIO. Right, the producer. But I mean, obviously, some of them pay for piece rate; some of them pay——

Mr. HANCOCK. We ask that employer, literally, how many people did you have working? How many hours did you work? What was the total dollars paid? So, you can actually derive whether it is a piece-rate worker, or whether it was an hourly worker, or regardless to the type.

It is broken out by types, and then weighted together by the number of hours worked.

Mr. DEFAZIO. But if you are working piece rate you are generally getting high productivity workers. I mean, if I were solely on piece rate, and I had very high productivity, and my people were earning $6, $7 an hour, that is going to skew your sample.

Whereas, if I am just paying people by the hour, I am perhaps not going to expect as much productivity. So, I am going to be attempting to pay less.

But you are setting a floor which is pulled up by the other.

Mr. HANCOCK. That would be correct. In other words if the piece-rate worker, say, receives $6 an hour, and the regular worker receives $5 or $4, when you put them together the piece-rate workers will cause the lower one to come up.

Mr. **DeFazio**. This is going to be a rolling base. You could never go below it. Except piece-rate workers, if they become very unproductive, could pull it down.

But the hourly workers cannot be paid less than the average—the $5.26.

Mr. **Hancock**. I cannot answer that. That is out of my—I can tell you how we collected.

Mr. **DeFazio**. Right. OK. Well, what does that mean, once we have set it at $5.26, how could it ever go on to reflect the market?

Mr. **Bailey**. Well, it only applies to the H-2A worker.

Mr. **DeFazio**. Right.

Mr. **Bailey**. The survey only excludes the H-2A worker, so that it deals with the domestic workers, or the SAW workers.

But obviously, if you have a pressure on the economy, if the A-workers were higher than prevailing, it would, I would think, have certainly an economic theory. I would say they would have a pressure to increase wages.

Mr. **DeFazio**. Well, I am hiring under H-2A. I may be hiring a worker at the margin, but what I am going to be paying is not the marginal productivity cost for that worker.

I am going to be paying the average productivity or cost of that worker.

Mr. **Bailey**. All right. The reason for the A-work is that the adverse effect wage rate is a philosophy that says the importation of alien labor has a depressing effect on wages. So, there is, in effect, this premium on wages to mitigate against that depressing effect.

Mr. **DeFazio**. At $5.26 an hour, I know a lot of people in my district would like to go south of the border, apply as an H-2A, and come back in, and get the job because they could not get it any other way that high.

I have a question of methodology. I yield back to the chairman.

Chairman **Wyden**. Well, a couple of other questions, if I might.

Mr. Bailey, farmers have told me in Oregon that they are unclear as to the exact criteria for certification on the H-2A Program.

Could you state for the record what the criteria is for certification under this, the key program at this point?

Mr. **Bailey**. Basically, there are two provisions in the law. One, there are not American workers available to do these jobs, and two, the employment of the alien worker would not have an adverse effect on American workers similarly employed.

As you suggested, then we write a number of regulations to explain what all of that means, and our regulations are a lot thicker than the law.

But any grower or any employer, not just in agriculture, who cannot find an American worker who has the necessary skills ready, willing, and able to work on that job, may apply for an alien worker.

Our job, then, is to screen, to try to make sure that the wage hours and working conditions will not have an adverse effect on the American worker, and to facilitate recruitment for the American workers.

Last year, in the Idaho orders, we ran through our interstate clearance process to 13 western States trying to recruit American workers to do those jobs, and that would be similar to what we would do if an Oregon employer applied.

Chairman **Wyden**. Are the standards for recruiting those workers which you have just mentioned a key? Are they consistent all across the country?

Mr. **Bailey**. They are based on prevailing practices in the local area. We have to do surveys of prevailing wages, and also prevailing practices, so that if they offered family housing in the past to local workers, they must offer family housing also to the interstate recruitment workers.

The wages, the hours, and the standards of production—everything—they cannot make it higher for the American worker than they do now for the employment of the alien worker.

Chairman **Wyden**. Well, that leads me to understand, then, that standards for recruiting workers are different in different areas of the country.

When will the standards for recruitment—the key part of H-2A—be available for Oregon?

Mr. **Bailey**. They are really done crop specific, and to the best ability that we can determine that a grower of that crop might be interested, because they are expensive to do.

So, we do not do these surveys until we think there is a likelihood that growers or employers will come in for that particular crop.

What we have been doing in Oregon is develop these universes and put them on the shelf. Developing the universe takes time, but it is not that expensive.

Actually going out and doing the surveys takes a great deal of money. So, this is the approach we have been taking to try to make the money stretch to get the job done.

Chairman **Wyden**. Still, I am a little bit concerned that does not send a message to Oregon agriculture of what the standards really are going to be on recruiting under H-2A.

You say, well, you will deal with it when it comes up.

Mr. **Bailey**. Well, the main standard that the Government is interested in is what is the standard of wage, and that we published in the Federal register last Tuesday, and they know that is $5.26.

Chairman **Wyden**. Why don't you submit for the record as well, all information relating to standards in the State of Oregon with respect to the H-2A Program, and particularly on the recruitment issue as well?

The next question I wanted to ask goes beyond standards for getting into the program to enforcement standards, and, of course, Mr. Buck, that is your domain.

Farmers tell me, with respect to this, that they are unclear what the enforcement role of the INS will be in the H-2A contractual area.

Are there going to be raids as a part of carrying this out? Or how is this to be enforced?

Mr. **Buck**. Congressman, I am glad that you asked that question. That will give me a chance to talk about some of the things we are doing to assist the farmer during this transitionary period.

I grew up on a farm in Tennessee, so, I can be very empathetic with what the farmers in Oregon are going through.

Our time-sensitive crop was tobacco and a couple of others.

Last year, when I was here, this appeared to be such a phenomenon that suddenly there would be a shortage of laborers when there was not any statistic lately to prove that there was a shortage of laborers.

Talking with the growers since then and today, what I hear most often is that the major concern the farmers have is not the labor, it is the market.

The world market, as well as the international market, has a profound impact upon what is going on in Oregon, Washington, Idaho, and the northwestern States.

We have gone directly to the public in trying to help alleviate, or to alleviate this misunderstanding or lack of adequate information in the form of our employer-laborer relations program where we are making individual personal visits out to the farmers and other employers explaining very carefully what the law entails, including the sanctions part of it.

This past year we made something like 156,000 personal visits in my region alone. Around the Nation we have made almost a million visits already to employers, to make sure they understand the program.

During this educational period, we have taken 50 percent of our border patrolmen and 50 percent of our investigative program personnel, and we have put them into the employer-laborer relations program, which means we have down-played the enforcement aspect of the law during this period of time to the point that we are only doing minimum farm and ranch checks.

We are not making raids on the farms in order to allow the farmers and the growers plenty of time to adjust to the program to figure out how they are going to make adjustments in their planning process.

We will continue during this year to avoid any kind of enforcement activity that may appear to be disruptive to the farmers in the area.

Now, very specifically, what role do we play in the enforcement? The law very clearly states that if illegal workers are present in the workplace, it is the requirement of the INS to remove those illegal workers.

For all other industries right now that includes a fine. If an employer, outside of agriculture, is employing illegal workers, once they have been given a courtesy citation and they continue to hide the illegal, then they are subject to fine and possible imprisonment.

The agricultural history is not subject to that law yet—that is a special inclusion in the law—until December of this year.

After December of this year, if the INS determines that illegal alien workers are being used in the fields, then that farmer or the grower will be subject to the same penalties as everyone else, which includes fines and for very blatant, obvious disregard of the law, possibly some prison sentencing.

Chairman **Wyden**. Well, I am not convinced the educational effort that you have described is working that well. Frankly, if it was, I do not think we would have seen that finding by our strawberry commission that 40 percent of the workers are illegal.

I think that a good educational program would not have resulted in such an incidence of that problem, but we certainly want to work with the Department on that.

The other question I wanted to ask—and perhaps I will start with the Department of Agriculture—is this question of bringing into the process the agricultural commission that is provided for in the act.

It seems to me, this would give us a chance to get at some of this technical, material—data collection, and the like—by involving directly, people on the frontline—people from Oregon who could be represented.

Do you all support activating the agricultural commission?

Mr. **Hancock**. Mr. Chairman, I am not sure in terms of the policy makers at the Department level how they have addressed that. But I will speak literally from the statistics end in agriculture.

We always actively try to seek the input from our State statistician. I should emphasize, we are a cooperative agency, and work with all the State departments of agriculture nationwide.

So, there is a close working relationship with the State departments of agriculture.

We do hold what we call data users meetings where we ask data users to come in and comment on our program. But the specific commission set up in this, I cannot respond to that part yet.

Chairman **Wyden**. I would like to ask, formally, that Oregon be included in the work of this effort. There is concern that they may have not been.

Gentlemen, have you any additional questions? One other question with respect to the penalties issue, if I might, for you, Mr. Buck.

If we see significant problems, again, this year—particularly with H-2A, or problems along the lines—that we saw last year, would the department be willing to look at moving back the initiation of penalties?

As you know, they are supposed to go into effect in December. If there are problems with this year's crop of the kind that our farmers are fearful of, would the Department be willing to look at moving back the penalties?

Mr. **Buck**. Congressman, I think I could, just across the board, make a blanket statement that the service is interested in doing everything that we possibly can to assist the agricultural workers to comply with this particular law.

We are also holding meetings, conferences, public meetings, private meetings with growers, trying to understand the essence of the problems that the farmers might be experiencing.

One of the main things we are trying to do is make sure that the lines of communication are open so that we understand the little problems, as well as maybe some of the larger problems.

We are receptive to doing whatever is necessary to make this, a good law, work very effectively for the farmers in this area.

Chairman **Wyden**. Well, I thank you all. You all have cooperated with the subcommittee. You have two Members of the Oregon congressional delegation here, but I can assure you that the whole delegation is vitally concerned about where we are in terms of implementing this law.

We just cannot let a sector of our economy that produces something like $200 million worth of economic benefit to our State get plowed under.

We are anxious to work with you. There is much to do, and I thank you for your cooperation. Let us say within 10 days of this hearing, I would like the matters that I asked for in writing to be submitted to the subcommittee.

If you do not have anything further you would like to add, we will excuse you.

Mr. **Hancock**. Thanks for a chance to be here.

Chairman **Wyden**. Gentlemen, thank you.

Our next panel: Mr. Mike Kaiel, Chair of the Labor Subcommittee, Governor's Task Force on Immigration; Mr. Bruce Andrews, Deputy Director, Department of Agriculture; and the Honorable Rocky Barilla, Oregon House of Representatives.

Gentlemen, we welcome you to the subcommittee. I note we are already well behind. You all have done very good.

I think you know that I have already been trying to explore some of the ideas that you have been exploring with the agricultural sector.

So, we will make your prepared remarks a part of the record in their entirety, and if you could summarize your principal concerns, that would be helpful.

Let us begin with you, Mike, and we welcome you

TESTIMONY OF MIKE KAIEL, DEPUTY LABOR COMMISSIONER AND CHAIR, LABOR SUBCOMMITTEE, GOVERNOR'S COORDINATING COMMITTEE ON IMMIGRATION REFORM AND CONTROL ACT [IRCA]

Mr. **Kaiel**. Thank you, Chairman Wyden, and members of the subcommittee.

Obviously, you are well informed. You have raised the appropriate issues. You are getting at the heart of the matter.

There are a couple of things I want to go back over, and a couple of suggestions that we would like to make this morning.

First, I think it is clear that we had a problem in 1987. We will have a similar kind of situation in 1988, given other factors such as the weather and market demand.

The real crisis we are looking at is in 1989. That is when this is really going to affect Oregon. I appreciate the fact that you are raising the issues now because it gives us time to work through the problems and come up with some solutions that will help Oregon and its industry. The timing is appropriate.

There are three possible solutions to the shortage of agricultural workers in Oregon that are in the act. The first is the commission that you mentioned today. The second is the RAW Program, and the third is the H-2A provision.

Very briefly, as far as the commission, it is noted that Oregon is not represented on the commission at this point. The request, of course, is to see that Oregon is represented, if at all possible.

Chairman WYDEN. Under the agriculture commission idea. Well, I support this strongly. That looks to me like one of the ideas—and you have suggested a variety of them—that could be a very low-ticket kind of item, because it is just a question of making sure that the State is kept abreast and given the chance to participate extensively.

Mr. KAIEL. Second, under the RAW Program, which was designed really to replace SAW workers who leave agriculture at some point in the future, the problem we have right now is that we are not getting the number of SAW workers that we anticipated here in Oregon.

I heard the testimony earlier about the 300,000 and some documented SAW workers; in Oregon it is less than 9,000.

In the Oregon strawberry industry alone we are looking at 39,000, 40,000 workers, and at least close to half of those are undocumented. We are looking at 9,000 documented SAW workers at this point. There is a problem, clearly.

What needs to be done between now and then to get the SAW workers documented because there are a lot of eligible workers? Part of it is education, as you mentioned.

There is a lot of confusion, still.

The RAW Program is based on having adequate SAW numbers, and quite frankly, if we start with that low base the RAW Program cannot work.

So, we have to really examine the RAW provisions, and whether or not those provisions can be established—the formula established that is based on the actual need of workers, and not on an artificial low SAW number. We need to consider that.

Third is H-2A. That is the one that we are really talking about right now. It is seen as the solution to problems that growers face.

I think it is pretty clear that the way the statute was established, and the regulations have emphasized that H-2A is primarily in place to protect domestic workers.

Secondarily, it is a solution—a possible solution to bring in foreign workers. But the regulations are nothing but a set of barriers that would be very difficult for anybody to get through, and I can appreciate that, being a bureaucrat myself.

Chairman WYDEN. Mike, if you would, and I think it would be helpful at this point because that is what I said in my opening statement—that is an area where people just find it incomprehensible.

Could you say specifically the problems you have with those H-2A regulations, and why they are the kind of barriers you described?

Mr. KAIEL. Yes, Mr. Chairman.

First of all, we already know about the adverse wage rate. That has been discussed at some length this morning. That is problem number one.

If you are not paying your workers that rate, and you cannot afford to pay them that rate, it does not matter how easy it is to get through the process. You are not going to be able to afford to pay the workers that rate and come out ahead. That is number one.

Number two, there is a housing provision. We know from a study that was done a couple of years ago through the bureau of labor and industries that in Oregon we have a serious lack of housing for farm workers.

The strawberry survey that was completed indicated that 80 percent of the growers do not have adequate housing that would meet the standards that are established through the regulations.

So, even if they could somehow pay the wage rate, they have no way to house these people. That barrier alone is going to turn back most of the people that are going to be looking at H-2A, the small, medium-sized growers that, quite frankly, couldn't do it on their own to begin with.

H-2 is really not set up for individual growers in bringing in workers. It is going to take associations and very large concerns to take advantage of the H-2A Programs.

Then we have the requirement that if you do qualify somehow, and that you can demonstrate that there is a shortage of domestic workers, and you bring those workers in—and, of course, you are paying transportation costs in addition to the base rate and providing the housing—you are required to pay domestic workers the same rate and to hire them during the first half of the contract.

I can tell you, from talking to growers, that if you are going to be paying a wage rate that is higher than those around you because of the contract specifications, people are going to come to your door and look for work, and you are going to be required to hire those people.

Another provision that makes it extremely difficult, and not very practical.

There are others. I think as you listen to some of the other people this morning you will see that each piece, in and of itself, would be a problem putting them together; and it is almost an impossible task.

Now, what I would like to do very quickly is to summarize some of the possible suggestions that may help work through some of the problems.

I must say that the Labor Subcommittee that I chair has been bringing together for the last year the parties that need to work out the problems.

We know that we have to turn to you and Congress to solve them ultimately. We do not have that authority. But we hope in the next couple of months to come out with some very specific suggestions, and there will be some today. There will be more to come.

As far as the funding for the wage determinations, it is clear that the way that the U.S. Department of Agriculture currently conducts the surveys is not adequate.

I think it has to be crop-specific, area-specific, if it is going to have any impact. Strawberries, cherries, and apples are all different wage rates. You are not going to be paying the same rate.

Second, some consideration should be given, as far as wage determination goes, of combining the efforts of the U.S. Department of Agriculture, and the local employment service activities where they also develop crop-specific wage rates. Why not combine their efforts in some way?

I do not know exactly the mechanism, but it should be looked at.

Second, support funding for a survey of Oregon workers in the agriculture industry this year. We need to find out whether these people are documented or not. Specifically, whether they have become SAW workers, whether they are domestic workers, whether or not they are undocumented, where their home base is, and what their future plans are.

If we could do a survey this year, during the season, to get that information, we would know for sure what we are facing in the year. None of us have that specific information.

Third, accelerate and expand the RAW Program. As I mentioned before, it is based on artificially low numbers, or probably will be. That is not workable.

Fourth, as far as housing, Farmer's Home Administration is one of the few sources of dollars for migrant housing. The 514 and 516 funds are allocated on a national basis. There is about $10 million total available for the country. That is hardly enough to satisfy Oregon, let alone the rest of the country.

If the funds could be allocated to the States, rather than on national competition as it is now, that would give Oregon at least some of those dollars.

Quite frankly, we know that there are growers that are interested in building housing, but they do not have the means. This would be a way to assist them.

Another is to encourage, again, Oregon's participation on the national commission, or, if that is not possible, the commission will be receiving appropriations to see that some of that money is spent to look at Oregon's unique problems that are very different from California, or Texas, or some of the other agricultural States.

Finally, is to encourage the participation between the Federal agencies and the State agencies, and the growers, and everybody else, as they develop new regulations or modify what they are doing—make sure that we have the opportunity to work with them.

Thank you.

[Mr. Kaiel's statement may be found in the appendix.]

Chairman **Wyden**. Thank you.

TESTIMONY OF BRUCE ANDREWS, DEPUTY DIRECTOR, OREGON DEPARTMENT OF AGRICULTURE

Mr. **Andrews**. Thank you, Mr. Chairman, Mr. Congressman.

We really appreciate your interest in Oregon's agriculture and our problems.

I will try not to replicate everything that has been said before, but first of all, there has been a lot of talk that last year was an abnormal year.

Well, every year in Oregon, and every year in agriculture can be stated as being an abnormal year. There is no norm. We have our 170 commodities that are produced in Oregon. All require varying degrees of intensive labor—labor that in the past has predominately come from foreign workers.

To be able to predict 60 days in advance when that harvest is going to begin, and how long that harvest period is going to last, is nothing short of ludicrous.

We have talked about the available programs in the past, and the SAW worker program was established to provide a pool of agricultural workers for our crops.

We have heard that there are 320,000. Well, there is some indication that many of this 320,000 to date will not, in fact, be documented, because they will not qualify through the application process, therefore, greatly reducing the number of potential workers for our agriculture.

What we are then saying is that the H-2A Program will become the preferred method of seeking out and recruiting agricultural workers for Oregon's crops.

Can you imagine 170 different crop H-2A Programs in Oregon? I think just the sheer thought of that makes me slightly fearful that what we are really doing is creating a uncompetitive position for Oregon's crops in the future.

We know that we have specific needs for labor. The strawberry commission has pointed out that we need between 38,000 and 40,000.

The point is that we need to demonstrate a method that farmers can access a pool of labor that will keep our crop production inherent and in the State of Oregon without artificially moving it out of the State boundaries, and even out of the Nation's boundaries.

We suggest possibly seven changes, or methods, to help the current situation. We have talked about the adverse wage rate and the H-2A Program, and we do believe that needs to be reconstructed, and that survey must be done on a monthly basis, and that it must be commodity specific.

Commodities and regions vary from the different costs that laborers are paying. We believe that the H-2A Program should be modified in the areas of housing and food, and that some type of provision for food, transportation, and housing be factored into the wage formula.

In order to produce, potentially, a greater SAW population, we recommend that the extension of the current qualification period go through the end of 1987.

Extension of this qualification period will produce greater numbers of applicants to meet the SAW projections, maybe helping us to carry through to the RAW Program that will not go into effect until 1991.

Now, in accordance with number three above, the initiation for the penalty phase of agriculture workers should be moved back 1 year to 1989.

We believe that the agricultural commission provided for in the act should be immediately activated, with special care being taken to ensure that the northwest interests are represented.

This group should begin to perform the important process of data collection analysis and projection of labor trends, and give direction to agricultural labor policies.

The Commission should employ all means at its disposal to ensure that agricultural issues in this country are spared greater difficulty.

The agriculture commission should immediately establish a study on the long-term effects of labor availability to American agriculture and its related processing industries.

Such a step could establish competitive trends, and could be used to focus research in needed areas.

Frankly, we are flying blindly. We do not know what the trends are, or what the capabilities will be in the next century.

But if we do not plan now to establish a data base, we may find that we have ceded all of our once competitive and comparative advantage in agriculture to many other nations in this world.

Seven, there should be a reduction of that 60-day requirement for submission of H-2A requests to the Department of Labor.

As I have stated earlier, with the complexity of the cropping situation and patterns within Oregon, it is almost impossible to guarantee when you are going to need this pool of labor.

In summary, the employers who are bearing the brunt of this law in the Northwest are those that are involved in agriculture.

If we want to keep our competitive basis, an industry that represents over $2.4 billion in direct farm production to this State's economy, we need to figure out ways to enhance agriculture production not limited.

Thank you.

[Mr. Andrew's statement may be found in the appendix.]

Chairman WYDEN. Thank you. I want to say thank you to the Department for the help they have given me in working on this issue and a variety of others. We will have some questions in a moment.

We have a very distinguished and able member of the Oregon legislature, a friend to the subcommittee, Mr. Rocky Barilla.

We welcome you, Rocky. We will still make a part of the record your testimony in its entirety. If you could just highlight some of your key concerns, that would be very helpful.

TESTIMONY OF HON. ROCKY BARILLA, MEMBER, OREGON HOUSE OF REPRESENTATIVES

Mr. BARILLA. Yes; good morning Chairperson Wyden. Good morning Congressman DeFazio.

It is a great pleasure to be here in front of you. I speak here wearing two hats. I am a State representative from Salem, OR, representing Polk County and parts of Marion, and agriculture is our number one crop.

I also am a professional down at the University of Oregon Law School in district 4, and I have been teaching immigration law for the last 11 years.

Hearing the testimony, I heard the right questions being asked, because I have been involved in a national network of immigration attorneys.

Let me just say that I echo Mr. Kaiel's and Mr. Andrews' testimony, and can add a couple of points.

In terms of specific commodity prevailing wage rates, that has been done in the past. It has been used to contribute to regional differences.

It has, in my opinion, been difficult for the Pacific Northwest to get labor certificates, compared to States like New York.

It was very easy years ago for Jamaica to get H-2 workers in their apple-picking process. So, I think there are regional differences.

In terms of the Northwest's unique problems, one of the things that has happened is, due to these programs, Texas, California, and other States are facing the same problems we are, and they are keeping the workers.

We are competing with other States. One of my suggestions, that has been echoed, is more interstate coordination. We need more Federal-State coordination to make sure that we adequately plan the flow of labor from one State to another.

Last, I have done several labor certificates for immigration purposes. They are more complicated than filing your Federal income tax returns.

I have had applications rejected because I have signed in black ink, versus blue ink. I mean we are talking about inches of documentation. It takes months and months to accumulate the documentation.

The last point I wanted to make is I am concerned about agriculture in the ancillary industries—food processing, transportation to Portland.

That is all dependent on what we do here today. I am very pleased with what the subcommittee is doing.

Thank you very much.

[Mr. Barilla's statement may be found in the appendix.]

Chairman WYDEN. Well, Rocky, thank you very much, and I will refer to you, as well, as Professor from here on.

I guess it is really quite an indictment of the system, and you have really described it as the Valhalla of bureaucracy—that it is more bureaucratic even than some of the other forms we fill out, and the things are being rejected because they are in the wrong color ink.

I look forward to working with you, and I find your testimony very helpful and appreciate it.

Mr. BARILLA. Thank you, Congressman.

Chairman WYDEN. The only question I really have at this point deals with the SAW changes that you all would like to see. It seems to me that the need for changing the SAW Program is kind of representative of the catch-22 that our farmers are in.

If we do not get those numbers up in the SAW applications, as you all have described, then we were also going to get hammered on that other program.

I gather it is Replenishment Agricultural Workers—the RAW Program. So, we are getting hit with both barrels unless we make some changes in the SAW Program.

Both of you touch a bit on the question of documentation of SAW's. I support the idea that you also offer, as well, this extension of the qualifying period.

But could you tell us specifically what changes in documentation—I think you started with this Mike—would be helpful in the SAW Program so we can know that specifically?

Mr. KAIEL. Chairman Wyden, I think I am going to let Mr. Andrews answer that more fully. What people have said over and over again is that number one, the requirements are not that clear; there is a lot of confusion.

So, just making it very specific what is required, and then being able to work with growers who in turn can help their people.

I do not have any specific recommendations on the documentation, and I would rather have Mr. Andrews answer that, if you like.

Mr. **Andrews**. One of the problems that release-wise we are hearing is that many of the SAW applicants are a little distrustful of the process.

So, what tends to happen is that when an applicant makes a successful application and is issued a temporary registration card, he will go back and show this card to members of his family or members of his local community and say, "This is an application that works; it's proven. Therefore, let's take this one and just replicate it. We can run through the problem—the entire process."

What he does not realize is, in effect, that he may have prejudiced himself to the point that all those that use that application—even though they have legitimate claims to the SAW Program, or to amnesty, may have, in fact, precluded themselves from ever applying again.

This has been proven in the Haitian community in Florida, and we have heard additional testimony from the USDA individuals that this is also happening where large numbers, in fact, are not being accorded application status just because they have used inordinate forms, or some other forms of their friends that have disqualified themselves.

So, I think because of the distrust, we need somehow to bridge that gap, and let these people know that there is a legitimate function in this program, and that we encourage them to be legitimate with their request. At the same time, let's help the farmers legitimate those requests in such a fashion that they do not feel like they have to lie to serve the system.

What we are trying to do is create an acceptable pool of workers based on history and based on fairness. We are not trying to create a tangled web of bureaucracy that makes people forced, or fearful that they cannot go through the process on their own, and they have to borrow somebody else's paper work.

Chairman **Wyden**. Are there changes that might be made with respect to verifying SAW documents?

Mr. **Andrews**. I am sure that there are. I, personally, do not have the knowledge to really tell you that.

Chairman **Wyden**. I will leave the record open on that point. But if you all could get us any additional changes you would like to see in the SAW Program as it relates to documentation and verification, I think that would be helpful, because, as I have described it, if anything, the SAW Program might even be more important now than it was last year when we were in that crunch, simply because the SAW Program is going to affect the next one to kick in, this RAW Program.

I am sure the whole Oregon congressional delegation will want to work with you to try to come up with SAW procedures, extending the time, as you all recommended here, plus additional matters relating to documentation and verification, and the way it is administered—this problem you have mentioned, Bruce, about people being distrustful.

These are the things we have to work through. I will really pull out all the stops on that one, because I think it is even more important now than it was considered last year when we were just faced with it for the first time.

The gentleman from the Fourth District.

Mr. DeFazio. No.

Chairman Wyden. All right.

Unless any of you have anything additional you would like to add, we will excuse all of you, and thank you very much, and call our next panel.

Mr. Craig Smith, Northwest Food Processors Association; Mr. Doug Krahmer and Ms. Bonnie Hahn of the Oregon Farm Bureau.

We welcome all three of you to the subcommittee, and appreciate your participation.

Why don't we begin with you, Mr. Smith? We will make a copy of your remarks a part of the record in their entirety, and if you could summarize, it would be great.

TESTIMONY OF CRAIG SMITH, MANAGER, TECHNICAL PROGRAMS, NORTHWEST FOOD PROCESSORS ASSOCIATION

Mr. Smith. Thank you very much. I really appreciate the opportunity to be here.

I would like to deviate somewhat from the testimony I did put in for the record, and just address a few issues that have been raised this morning that I think have left a wrong impression.

I heard several comments earlier from Mr. Buck of the INS, talking about plenty of SAW workers, and no real shortage of workers last year.

I think you did address that. But I would like to point out a couple of things. One, that we are well below the projections in Oregon for SAW workers at this point—less than 10 percent of what was projected, and I do not believe that there are plenty of SAW workers.

That there is a shortage, and that there were not statistics to prove it—well, there are statistics to prove that.

I think Dr. Mason's survey from Oregon State University, that you have a copy of, was recently released and validates the fact that we are 16,000 to 17,000 workers short if we are going to use legal workers, which is required under the Immigration and Control Act.

The fact that the world market is causing this problem—well, I think that the comment on the world market really validates the position that we are taking, that there is a crisis.

The fact is that Oregon strawberry growers do not compete in a world market, and that consequently we do have to pay wages that will allow us to compete in that market, or we are all going to just go home.

I think that is the key point that is sometimes misinterpreted. The fact that we are involved in a market that we have no control over—and we are a fairly small player in the game—but we provide a high-quality product to that market, has been proven.

The berries that came out last year in California for instance, California froze over 100 million pounds more last year than they normally do. That was our total production.

So, you can see what happens, and the fact that the growers are making more money—well, we did harvest a big crop last year, but the impact of that is going to hit this year.

In talking to growers, we are hearing that they are going to get 25 cents a pound this year from processors for their crop.

There is no fresh market to speak of in Oregon for our berries. They are all frozen. So, consequently, we are talking about absolutely no way that those growers can make money at 25 cents a pound.

I think that those statements tend to minimize the fact that there is a critical shortage of workers.

One of the other things I would like to point out is on the SAW, or the H-2A Program. One of the, I think, unexplained impacts on this program is going to be—if I am paying the adverse effect wage rate, which is quite a bit higher than what the going rate is now for strawberry workers—the effect is going to be that I am going to have to hire domestic workers who are going to be there on that first day of picking.

Let me use an example that I have in my testimony. If I am a farmer in Washington County, and I have 200 H-2A workers, the first day that I go out to pick that crop, I am going to have at least 175 domestic workers on my doorstep looking for a job at the higher wage rate.

That means that I have to displace 175 of the 200 people that I have approved; put the domestic people to work at an adverse wage rate that is higher than the market, and then I have 175 people that no one seems to know what I am going to do with them.

It does not seem reasonable that I can send them home, because they have a contract. It doesn't seem reasonable that I can send them down the road to take the place of the workers on the other farm because that individual does not have an approved H-2A Program.

So what happens? Well, the program works against itself. It displaces the workers that are brought in to help the economy. It creates an artificially inflated wage rate, and it causes chaos in the industry.

In reading the CFR for the Department of Labor that explains the adverse wage rate, I see that it says the purpose of that wage rate is to keep from deflating the wage rate in an industry. That is the intent of adverse wage.

We certainly would support that. We do not want any situation where the workers are brought in and are going to deflate the wages of domestic workers.

However, what we have in this situation, and using the strawberry example, is absolutely the opposite. We have a situation where the adverse wage rate is inflating artificially the wages that are required to be paid, and it would not just inflate it for me, as an H-2A employer. It would inflate it for all of my neighbors because they would have to pay the same wage to keep their workers from coming over to my farm and going to work.

So, I think that just a few of those things—I believe, frankly, that the way the adverse wage rates are set up now is contrary to the regulations, and probably a violation of the intent.

I do think that there is something that can be done about that.

[Mr. Smith's statement may be found in the appendix.]

Chairman WYDEN. Well, I thank you for an excellent presentation, and very concise. I will follow up in particular on that regulation because you make a good case that there are some real questions there that would indicate they are acting contrary to congressional intent.

I thank you. Mr. Krahmer.

TESTIMONY OF DOUG KRAHMER, CHAIR, LABOR ADVISORY COMMITTEE, AND BONNIE L. HAHN, MANAGER, LABOR RELATIONS DEPARTMENT, OREGON FARM BUREAU

Mr. KRAHMER. Mr. Chairman and Mr. DeFazio, I am very pleased to be here to testify in front of you here today.

I am a grower from Washington County. I am also chairman of Oregon Farm Bureau's Labor Advisory Committee.

Oregon Farm Bureau has submitted testimony today. Two pieces of information that we had, somehow got left out. We would like to add them in.

Chairman WYDEN. They will be put in the record at the appropriate place, with your testimony.

Mr. KRAHMER. Thank you.

Currently, only three ways exist to admit and adjust foreign agricultural workers into the United States to harvest perishable crops.

They are the SAW Program, H-2A Program, and the RAW Program, as we have talked about here today.

The SAW Program legalizes already existing agricultural workers, but SAW workers are not required to continue in agriculture, and may choose not to work in Northwest agriculture.

During 1988 and 1989 and before the beginning of the RAW Program, which starts in 1991, the H-2A Program is the only way to legally admit aliens to work in U.S. agriculture on a temporary basis.

This H-2A Program does not meet the needs of perishable crop producers in numerous ways, three of which are: The clearance and recruitment of domestic workers before the H-2A application is approved; number two is the current adverse wage effect rate; and number 3 is the housing requirements as defined in the H-2A regulations.

The purpose of the H-2A Program is to provide employers with an adequate labor force while protecting jobs of U.S. workers by not depressing existing standards.

The current H-2A Program, as stated, will inflate work standards, and will not ensure adequate workers for Northwest perishable agriculture.

One example stated by the Department of Labor and by INS was the Snake River Association. That Snake River Association is hiring people to move their irrigation pipe, and has in no way represented perishable agriculture in the State of Oregon.

I would contend that the comparisons are not even close.

The first problem I will talk about quickly is the clearance and recruitment of domestic workers before the H-2A application is approved.

It appears that our district Department of Labor director will require more than other districts. We have information in our testimony from the State of Virginia where they do not require the same things that our district director is telling us that we will be required to do.

Our solution to this problem is recruitment on the part of the growers should be limited to local area newspapers, contact with local and State employment offices, and employment services in labor surplus areas.

Out-of-State recruitment would be handled by the employment division or other agencies.

The adverse wage effect—we have three possible solutions. One is agricultural employers should only need to provide the minimum wage as required in other industries when aliens with work authorization are allowed to work.

Number two, refigure the adverse wage effect by dropping States, or adding adjoining States. For example, $3.95 in Idaho, and $5.26 in Oregon.

Figure the hours on the basis for perishable crop agriculture only and provide adverse wage effects for each commodity group or crop.

Number three, the housing requirements is defined in H-2A regulations. Since most Oregon agricultural producers do not have housing at this time, which is evidenced in the strawberry grower's survey, and many of those 20 percent that do have housing do not meet Federal standards.

I know in our own particular case, when we built the housing that we have on our farm, we built it to State and local standards, and it does not meet Federal standards.

I would ask that prevailing local practices of housing be made to meet the H-2A rules.

Would you like me to stop at this point? There is one other completely new suggestion we have in our written testimony at this point.

I could either go into that or hold off at this time.

Chairman **WYDEN**. Why don't you just summarize it, and that would be fine.

Mr. **KRAHMER**. OK. One of our ideas is to admit workers into the United States under a visa program similar to the student visa program at this time.

To make that program when they come in, the visa would only be good for a 6- or a 9-month period of time, which would allow the worker to only work in seasonal jobs, and then have to return home for the balance of the 12-month period.

It is an idea that has been talked about before. We realize it is completely different and separate from any of the things we are talking about today.

But in our minds it could be brought in and used fairly simply if we could get regulations written to that extent.

Chairman WYDEN. Well, I will examine all of the suggestions of the Farm Bureau, and I very much appreciate your cooperation and your efforts in this area as well.

Ms. Hahn.

Ms. HAHN. Yes; I am basically here to answer questions, and maybe just to offer one more suggestion that we have on our list here, as I may.

One other solution that we had for the guest worker program would be possibly to initiate something like the RAW Program as it is expected to be done in the future, and, therefore, on an emergency basis so that until something is solved that we have workers able to enter as long as they stay working in agriculture for 90 days, until we can get something else settled to solve the problem in the Northwest.

Otherwise, I would rather answer questions because the rest of our testimony is related to possible things that we could do as alternative ways, and not specifically the H-2A Program.

[Mr. Krahmer's and Ms. Hahn's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. All of you have summed it up very well. I only had a couple of things that I was interested in at this point to follow up further.

Mr. Krahmer, you mentioned this question of the recruitment standards, which is a vital part of the H-2A. You are already learning things in Oregon are different than they are elsewhere, thereby making it difficult for Oregon farmers to plan and anticipate their needs.

Could you describe that a little bit more in terms of what you have heard about differing standards on recruitment?

Mr. KRAHMER. Yes; we have talked with the Department of Labor two or three times, at different places. They seem to change their story a little bit each time.

But, as best we can understand it at this time, they are going to require us to recruit, basically, west of the Mississippi River.

They have mentioned we would probably have to recruit heavily in Texas, probably down in Arizona, and California.

To the best of our knowledge, those other States that have used the H-2A Program, or H-2 Program, which has, basically, been on the east side of the Mississippi River have not had to recruit out of State.

Chairman WYDEN. So, what the Department of Labor has told you as a grower, and your organization, is that Oregon farmers would have to go thousands of miles—or I guess you said Texas, not thousands of miles, a substantial difference—to get their workers under H-2A, and that would not be required for the eastern States.

Well, you all have been very helpful. I would probably ask you more questions if there were more time.

Mr. Smith, I gather you would like to make an additional point.

Mr. SMITH. Well, I just had one thought when Bonnie was going through the emergency RAW idea. Would it be possible if we looked at the projections for SAW workers—given the fact that we are not coming up to those levels—would it be possible to implement the RAW Program on the basis of how many do we let in to work in perishable agriculture on the basis of who did not apply?

In other words, the idea on RAW was to replace those that left. But if we do not get them to apply in the first place, we still have the need for that many workers.

Is there the possibility of using the RAW Program to replace those individuals that it never did apply?

Chairman **Wyden**. That is an interesting idea. You would want some kind of survey based on need, I guess.

Mr. **Smith**. It could be area by area. For instance, we know what the projections were for Oregon; we know where we are. We need those workers. There is no question about that.

The idea was to allow those individuals to work anyhow. Would there be a possibility of going ahead and allowing that to happen if we do not get adequate SAW applications?

Chairman **Wyden**. Well, an interesting idea. Really go with the RAW Program—go forward with that program based on projections of need.

Mr. **Smith**. It is just an idea that hit me right here, and I have done no research on that, so I do not know what to——

Chairman **Wyden**. We need as many good practical ideas to hit us anywhere we can get them. So, I appreciate it. I am going to follow up on all of your suggestions.

Ms. **Hahn**. Mr. Wyden, there are provisions. We have had emergency agricultural acts in the United States since 1917, particularly during the time of war.

So, there are provisions and guidelines for developing such a program.

Chairman **Wyden**. Well, thank you all, and we will look forward to working with you.

Mr. **Krahmer**. May I make one last comment?

Chairman **Wyden**. Sure.

Mr. **Krahmer**. I guess I kind of did it at the last minute, a week or two ago also. That was the strawberry plant survey made with the strawberry plant growers in 1987 which showed 40 million strawberry plants sold in the Northwest.

Strawberry plant sales, according to Merv Ward, one of the strawberry plant growers for 1988, are down 75 percent.

So, I would like to remind the committee that this is something that is already affecting our industry.

Chairman **Wyden**. Those are people who are, basically, just not planting again.

Mr. **Krahmer**. Again, they are not planting because of the doubt in their mind whether they will be able to harvest their crop.

Chairman **Wyden**. Now, I want to make sure I have it—75 percent with respect to which crop is not planting again?

Mr. **Krahmer**. This is strawberry plants.

Chairman **Wyden**. Strawberries.

Mr. **Krahmer**. The plantings are down 75 percent.

Chairman **Wyden**. Already they are down.

Mr. **Krahmer**. Already.

Chairman **Wyden**. Well, all of you have been very helpful. We look forward to working with you.

Our next panel: Mr. Jeff Townsend and Mr. Robert Lafara of Townsend Farms; Sue Naumes of Naumes Farms; and Mr. Rick Steinfeld of Steinfeld's Products.

Well, I welcome all of you. I note that two of the employers are in Oregon's Third Congressional District. I am very appreciative of that.

Ms. Naumes, it is good to see you again. I enjoyed that visit very much this summer.

Let us begin with you, Mr. Townsend. You will be representing Townsend Farms?

Mr. Townsend. Yes; I will. Thank you very much.

Chairman Wyden. We will make a copy of your remarks for the record in their entirety. If you could summarize, that would be great.

TESTIMONY OF MIKE TOWNSEND, ACCOMPANIED BY ROBERT LaFARA, TOWNSEND FARMS

Mr. Townsend. Not to be repetitive, I think everything we have heard has been very important from the fellow panelists. But we, as a grower and a processor, really are concerned with the problems that arise, so much so that my brother and my father at this time are in another recognized foreign country recruiting pickers, and not only field harvesters, but also people for our cannery.

It is not only the crop that needs to be picked, it is after we get it into the cannery, we need the workers to also process it.

We agree that the $5.26 an hour is almost $2 an hour more than required for domestic workers.

The administrative cost is too cumbersome, especially for some of our smaller growers.

We also feel that the rules governing recruiting practices should be limited for the local areas acquiring domestic labor prior to filing for foreign labor.

Our past experience with domestic labor indicates that the majority of the available workforce does not want to work in the agricultural area, especially the fruit industry, at any wage rate, especially strawberries.

We grow approximately 250 acres, 11 miles east of Portland. We feel we are in a prime area for recruiting domestic people to work, and we find it increasingly difficult to harvest our crop every year.

I feel that we probably, in our area, do as good a job as anybody at trying to get pickers, being in an area that we are. We feel not having the Mexican labor is definitely going to put not only ourselves, as a large grower, but the smaller growers out of business in a real hurry.

One of the conditions—the three quarter guaranteed contract, we feel, is also not fair. Subject to bad weather and mother nature, we feel that we cannot guarantee three quarters of the contract to come up with that other quarter if we have heavy rains or frost damage like we have had a couple of years ago.

In summary, I would just like to say we see the following effects on our industry: A lack of available labor at a cost that allows growers and processors to compete and maintain present levels of market share; the increase of cost to consumers; a reduction of economic activity in the agricultural area which would have a rippling effect throughout the food industry; creating a commercial environment that would open the doors to increase imports from countries whose labor rates are far below our domestic rates; and create a business environment that would force most smaller family concerns out of the marketplace entirely.

Thank you.

[Mr. Townsend's statement may be found in the appendix.]

Chairman **Wyden**. Thank you, Mr. Townsend. Ms. Naumes.

TESTIMONY OF SUE NAUMES, NAUMES FARMS

Ms. **Naumes**. Chairman Wyden and Congressman DeFazio, we feel there are several premises that must be accepted in order to comprehend the situation existing in the maintenance of farm investment to production and harvesting of the volume of crops emanating from the orchards, groves, and fields of the western States.

First, perennial crops are vastly different from annual crops. Investment is huge, labor requirements are greater, and the culture must be continuous. There is no cutting back or skipping a year. A constant commitment must be made.

Second, experimentation has been going on for 20 or 30 years to develop mechanical harvesting of fruit crops. At this time, very little progress has been made.

Additionally, consumers will not tolerate products that are damaged in harvesting.

Third, the Immigration Reform and Control Act is failing to produce the number of workers expected. Amnesty has not measured up, nor has the Special Agricultural Workers Program.

The Immigration and Naturalization Service is presently spending huge advertising sums in attempting to meet anticipated quotas.

Fourth, domestic workers will simply not do the hot, dusty work, no matter what the rate of pay. This has been proven over and over again, and has been documented for the U.S. Department of Labor.

Fifth, undocumented workers are suspicious of the INS because of ill treatment, and accordingly do not respond favorably to the complexities and the cost involvement in obtaining documentation.

Sixth, many employers—especially farmers with small acreages—are confused by the IRCA and its requirements. They do not choose, or are unable to educate themselves, and may accordingly be forced to retire or to use contractors.

Seven, the west coast horticultural industry has been severely affected by overproduction, and by the importation of sizable quantities of products from overseas. Witness the loss of over half of our canneries. Today, March 21, we are being affected by the importation of fruit products from Chile and other areas that have decreased the value of what we are receiving for our pears and apples by 20 percent of their value.

And that is today.

Eighth, it must be realized that the direct labor involved on the farm is a small part of the total labor force required by support industries such as equipment manufacturing, chemicals, transportation, processing, warehousing, marketing, et cetera.

As regards to the feasibility and responsibility of the H-2A program, if the Congress wants to undo some of the damage it has done with IRCA, we will first acknowledge the premises stated above.

The fact of the matter is that IRCA has failed in its attempt to solve these seasonal agricultural labor problems. There simply will not be enough workers under the program to harvest the national crops.

Domestic workers are unwilling and incapable of performing adequately. The alternative is H-2A. It is an unpopular solution for the following reasons.

One, it is not suitable for growers of crops whose harvest is of short duration, for example, cherries. Two, it is very expensive. It requires expensive free housing. We estimate, based on what we have done, that accessible housing will cost approximately $3,000 per worker.

Some areas have no, or inadequate facilities. It requires the payment of transportation costs from entry point to work location and return.

It requires the guaranteeing of a number of days work in a situation where weather, insects, and markets determine how much work there will be.

It requires the establishment of an adverse effect hourly wage rate to protect domestic workers who are not disposed to do the work because of the benevolence of their entitlements.

This is unrealistic because it promotes indolence and creates a situation where the number of workers required would be unmanageable.

In Oregon, the adverse effective wage rate is $5.26 per hour. Last year it was $4.52. The mechanism for developing this rate needs to be reexamined and evaluated in the light of competition from overseas, and particularly in consideration of the fact that the industry will demise before domestics satisfactorily harvest the crop.

We are already seeing some real crops being exported to Mexico.

It cannot be imagined that Washington State, which needs 50,000 harvesters to bring in a crop could do so successfully with domestics. It simply is not possible.

Other areas where problems exist are lack of housing. Some farmers have not been able to obtain financing to produce crops, much less build housing. Financial assistance would be required.

The processing of requests for H-2A permission to recruit must be prompt and reasonable. Protection should be offered users of the H-2A Program from fret, violence, and legal delays.

The guaranteed work provision should be modified.

Transportation requirements should be amended to permit recovery of the cost.

Our conclusion is that if the Congress acted in good faith, even if misguided, it now has the responsibility of correcting the damage it has created.

Employers have been put to substantial cost already, and with IRCA may be forced to leave some types of labor-intensive agricultural pursuits.

If this was the intention of the Congress, it will have been successful, unless there are programs initiated to ameliorate the impact of this unwieldy, thoughtless, insensitive legislation.

We are mindful of the saying, "Your life and your fortune are in jeopardy when the legislature is in session."

We do appreciate your concerns. We hope that you will address some of the issues that have been raised by the people today.

Thank you.

Chairman WYDEN. Thank you very much. Mr. Steinfeld.

TESTIMONY OF H. RICHARD STEINFELD, PRESIDENT, STEINFELD'S PRODUCTS CO.

Mr. STEINFELD. Thank you very much, Chairman Wyden, Congressman DeFazio. I will try and summarize, and I will be submitting written testimony later on today.

Steinfeld's Products Co., as you know, is a third generation family business that is operated in the third district now since 1922.

This year we will purchase approximately 44 million pounds of raw vegetables. Our summer crop is 100 percent contracted at a fixed price.

As you know, Oregon's spring is unpredictable at best. We can plant cucumbers—or our growers can—within a 20-day time period difference and harvest them on the same day.

It is very difficult, at best, to determine the 60-day minimum to show that there is a need for labor.

Our cucumber crop must be hand-picked several times in order to generate enough revenue for the grower, in order for him to cover overhead, and produce some surplus dollars to support his farm.

Pick harvesters have been looked at in the industry, but it currently is not being pursued because the rest of the Nation can use a once-over harvester.

A once-over harvester means that you can get the number of pounds or tons of cucumbers per acre through a spring crop and a fall crop. That is not possible in the State of Oregon. You need growing conditions.

How does H-2A affect Steinfeld's Products Co., and what needs to be done to modify the program and make it work?

First of all, wage rates. Cucumbers are a piece-work crop. There are between 50 and 350 harvesters in a field. Individual supervision of the laborers is very difficult.

When a field worker fills a bucket he gets paid. The more buckets he fills, the more money he makes. The variable weather conditions, such as too hot, too cold, or too much rain affects the amount of cucumbers on any given day.

There will be times when there are not enough cucumbers to pick to meet the minimum wage. The important thing is to pay the minimum wage per hour throughout the season. There will be exceptions.

There will be days when cucumbers are growing so fast you swear that you can hear them stretch. There will be other days when the Department of Labor, or any other governmental—

excuse me, unfortunately nature is not controlled by the Department of Labor or any other governmental agency.

On days when no work exists on the farm, the workers should have the right to be transported to other fields for additional labor as needed.

Documenting the worker shortage. Steinfeld's Products Co. recommends that this should be based on previous years' experience.

Again, no one wants to transport migrant labor from anywhere. The 60-day lead time is unrealistic. Unfortunately, no one can forecast future weather conditions to comply with the law.

Last year was the earliest we harvested cucumbers in several years. It was July 1. In previous years it has been as late as August 1.

The 50-percent rule in the worker recruitment requirements. Steinfeld's Products will spend over $2 million for its crop this summer.

Over 60 percent of this value will go into farm labor alone. We will spend an additional $2 million this summer for manufacturing labor, for our labor force at the plant goes from 160 to 400.

We feel that it is not right to bring in local domestic labor to replace the H-2A supplied labor force. It will increase additional cost, and put an additional burden on the manufacturer as well as the grower. This, in turn, will be turned over to the consumer.

I would be more than happy to answer any questions. I appreciate the opportunity to come down.

Thank you.

[Mr. Steinfeld's statement may be found in the appendix.]

Chairman WYDEN. Rick, thank you, and thank you all for excellent testimony.

Sue, in your testimony you mentioned threats and violence. From whom, and over what?

Ms. NAUMES. Well, basically, we based that statement on an experience we had several years ago when we applied for the H-2 Program. Before we knew of our acceptance, we were getting phone calls from people who were threatening.

We were also getting calls from the national media asking us about it. We didn't even know we had received the acceptance.

Additionally, it is instances back East where the farmworkers' advocates had to spend over $400,000 in legal fees defending their applications against some of the other different parties—labor unions and other interested parties.

Chairman WYDEN. This is nothing that has happened in Oregon?

Ms. NAUMES. No; well not recently.

Chairman WYDEN. As yet.

Ms. NAUMES. Right. As yet.

Chairman WYDEN. We hope not, but not as yet.

Ms. NAUMES. We wouldn't guarantee it.

Chairman WYDEN. All right.

From the standpoint of the H-2 situation, you heard Mr. Buck say that the program was working; that it had been successful.

It is hard for me to understand how it is a success, as I said then, when nobody has been able to make their way through the maze.

I have been at your farm, and you have housing which I think has been rated acceptable by a whole host of authorities. It seems to me that you all are an example that if the H-2A Program was working, would you all have gone forward and applied, and used it?

Ms. Naumes. We certainly would. But as I said in my testimony, it is extraordinarily expensive. We are looking at a global situation where the competition is difficult.

The adverse effect wage rate, we think, is unreasonable. It is absurd. It does not really relate to what is really going on.

I suppose, like everyone else, it is the court of last resort. Once penalties and jail sentences go into being, we will probably look at it a little bit more seriously.

But if it was a program that made a lot of sense and was good for us, we would be doing it right now.

Chairman Wyden. Well, that is helpful to know. Rick, you touched on this flexibility issue of particularly when somebody is short of workers, and you do not need them, be able to move them around better?

Could you elaborate a little bit on that? I mean, clearly, if you have a shortage overall, flexibility can help you some. But it is not going to be the entire answer if you have a shortage.

I am curious if you have any additional kind of suggestions. One we have talked about today—perhaps not with the emphasis we should have, but the idea of growers going in together on this H-2A Program as an approach.

But maybe there are other kinds of things that you could describe in this area, making it more flexible in transportation and other to help.

Mr. Steinfeld. Well, as was previously stated, we have short time period crops. As you know, first we picked strawberries and cherries, and then cucumbers is kind of a betweener crop—it is in between.

We have 40,000 growers for strawberries, and so the cucumber harvest has relied primarily on that labor supply. They come in, and it was pretty scary this morning to hear them talk about a 75-percent reduction in strawberry plants because that is going to adversely affect us.

Then the growers go on to apples, or they go down to California for grapes.

What I would like to see is, for instance, if the strawberry crop is late, and the cucumber crops bring up their H-2A pickers, that they be available to harvest other types of crops in other areas.

Chairman Wyden. Is the not allowed under the current system?

Mr. Steinfeld. That is correct. They could not—if it is an H-2A approved farm they could go into a non-H-2—they could not go into a non-H-2A approved field. That is my understanding.

Chairman Wyden. That strikes me as another low budget kind of thing which would help get us through it. I will follow up on that.

You are really saying, let growers from different crops share an H-2A?

Mr. Steinfeld. As well as the same crop.

Chairman Wyden. Well, I will follow up on that, and your other suggestion. It has been very helpful, and I thank you all for your patience, and for coming.

Our next panel: Mr. Michael Dale, Oregon Legal Services, Farm Worker Division; Mr. Ramon Ramirez, PECUN; Ms. Margaret Gottfried, Catholic Services Immigration Counseling; and Mr. Larry Sanchez, Oregon Commission on Hispanic Affairs.

Are we missing two of our panel?

Well, we will hope they arrive. Ramon, we welcome you. You have been very helpful to the subcommittee as well in tackling this complex myriad of issues over the years. I appreciate that.

I will make a copy of your prepared remarks for the record in their entirety. If you would summarize your key concerns, that would be good.

TESTIMONY OF RAMON RAMIREZ, PECUN

Mr. **Ramirez.** Yes; first of all I would like to read the statement. It is really brief. It was developed by our board of directors of the Union, four of whom happen to be strawberry workers who also worked in cucumbers, and in hops. Two of them are nursery workers, and two are reforestation workers.

It reads: As a farmworker union, the H-2 Program is a very big concern to us. Our organization is 2 years old, and in that short time our membership has grown to over 1,800 workers, dues-paying members.

We are just about to sign our first collective bargaining agreement in the history of the State of Oregon, improving wages and working conditions for our members.

This contract seems like a small step, but it represents to us a hope, the hope that some day farm workers will be able to live and work with the respect and dignity that has so long been denied us.

H-2A threatens the progress that is being made by farmworkers in the State of Oregon, as well as in other parts of the country.

Proponents of the H-2A claim that this program is necessary because of a labor shortage created by the Immigration Reform and Control Act, IRCA.

This proposed shortage has a lot of attentions since its passage in November 1986. In spite of all the scrambling of the growers under allies, there has been not a shred of evidence to support a claim of a shortage of workers.

On the contrary, studies have shown unemployment among farmworkers has doubled that of the national unemployment national average.

Mechanization has also added to the unemployment of farmworkers. In the Walla Walla Valley one can find people going from farm to farm in search of work.

This is before, during, and after the peak season of any given crop. Growers have always enjoyed a surplus of labor, thereby maintaining a cheap and unorganized labor force.

The H-2A is the key to maintaining the status quo. The history of these types of programs is one of worker abuse, rip-off, suffering for thousands of farmworkers and their families.

Historically, growers have never respected a protection guaranteed to the United States citizen farmworkers, much less will those rights be afforded to those workers brought in under the H-2 Program.

There is no reason to believe that this time it will be any different. PECUN maintains that there is no labor shortage; that no labor shortage exists, and that the H-2A Program is but another ploy by the growers to maintain their profits high and farmworkers unorganized.

We believe that the solution is in recognizing the right of farmworkers to organize, thus raising wages and improving the working conditions for this sector of workers.

We opposed this provision before it became law, as you are well aware of, Ron, because of its detrimental effect that it would have on farm labor, and we will continue to oppose its implementation.

This was written by our board of directors.

I just want to make a couple of comments here. I think the gentleman who was here, who was representing the growers, hit it on the nail when he told the story that if he had brought in guest workers, H-2A workers into the country, and had to pay their adverse wage, that he would have all these domestic workers at his front step.

I think that is very true. I think the message of that—of his point—was lost. I think the situation is this—and we have heard it through today's testimonies being given by different people—that Mexican labor is very important to the economy of this State.

I think it is about time that we recognize the contributions made by our community in this area, and the area of reforestation, and the food processing industry, and in Oregon agriculture.

I think what we are asking for is nothing different. I think that there are some basic rights that are afforded all workers.

I think that we are just tired of being paid $3.35 an hour and still having to maintain a family. We still have to provide education for our children at $3.35 an hour, $3.50 an hour, even at $4 an hour. That is not enough.

In some farms—I am not saying all the farms; there are some good people out there—but we do not have the right. We do not have any rights. We do not have the right. We sometimes work under these miserable conditions, under unscrupulous contractors who charge us—basically, they take away our whole check because they run the company store business, charging for rice, charging for food, charging for equipment, charging quota fees, and so forth. We are just tired of that.

I think the message is right. If you pay a decent wage, you are going to have a workforce. In regards to the strawberry industry, the crop came early, and the workers came late. But I think overall, as statistics have brought out, that it was the biggest crop in the history of Oregon.

I think that currently we are seeing an increase of potential SAW applicants coming into Oregon. I think some of the restrictions placed at the border during the first phases of the IRCA bill have now been filtered down into Mexico.

Those who are currently down there who cannot qualify are starting to trickle back up to the Northwest. In summation, what I am basically saying is that we think that there are enough domestic workers—U.S. citizen workers of Mexican descent. There are enough temporary legal residents here, and there are enough legal permanent residents to cover enough pickers to do the crops for the 1988 season.

I believe that, and I predict that there will not be a shortage in strawberries this year. One has to just go down to the Walla Walla

Valley. Go down to towns like Woodburn, St. Paul, Mount Angel, and you can just see at first-hand the amount of people who are asking for jobs in farms; who are hanging around downtown.

We invite you to come down to witness this first hand, to see this, and even interview some of the people who are, perhaps, potential SAW applicants, or people who are currently unemployed because there are no jobs available.

But we will oppose any attempts to implement an H-2 Program, strongly. I just want to make a clarification that we do not advocate violence or anything, as was mentioned by the woman that did a testimony here. We profess a nonviolent political action, and we will continue to do that, but we will strongly oppose any type of H-2 Program.

Thank you.

Chairman **Wyden**. Well, Ramon, it seems to me that underlying your point is a call for basic fairness, and it seems to me that is what the Government is supposed to be about. I am very anxious, as we have in the past, to work with you. I will have some more questions in a moment, and we will do it at that time.

Mr. Dale, we welcome you, Oregon Legal Services, former employer of Ron Wyden. I appreciate the chance to have you.

We will make a copy of your prepared remarks a part of the record in their entirety. If you would summarize your key concerns that would be helpful.

TESTIMONY OF D. MICHAEL DALE, DIRECTOR, FARMWORKER PROGRAM, OREGON LEGAL SERVICES CORPORATION

Mr. **Dale**. I would like to do that, and, if I might, also, I would like to depart slightly from the prepared remarks because there are some other areas that have come up today that I think I might be able to provide some clarification.

Probably, a key point that I would like to make here today is that the problem we have in labor shortage in Oregon, while I am sure you can find instances elsewhere outside of the strawberry industry, essentially what we have is a crisis in the strawberry industry.

I would like to suggest that part of the reasons for that—while IRCA probably has contributed to the acute nature of this crisis—part of the reasons for that would be occurring now even if there were no IRCA.

We have been involved with labor issues in the strawberry industry for numerous years. One of the problems we have had in obtaining compliance with labor standards is that the industry is a distressed one.

We have had a couple of good years, but the future does not look bright. It has been mentioned that there are substantial amounts of frozen strawberries in storage. That is where we compete best. Prices are low—dismally low.

There is just simply not room in the industry under current conditions, probably, to provide the kinds of jobs at wage rates and working conditions that we all think are minimal.

What that suggests is that the strawberry industry meets hell or it is going to go out of business. But I suggest that we have, in this country, a long history of aiding agriculture. It need not fall on the backs of workers to provide the relief merely because it happens that this crisis is coming at a time when there is a labor shortage as well.

I think the H-2A Program will not be needed in many industries because there will be adequate numbers of workers. In other industries where it is needed, it will be much more workable as exists.

The crisis of the strawberry industry should not be allowed to drive national H-2A policy to the detriment of the workers who harvest our crops, and particularly to workers who are at the very low end of the scale.

I would like to focus on a couple of points. Several times, the chairman has referred to the H-2A Program as the key program for producing workers for Oregon agriculture.

With all due respect, when the IRCA legislation was being adapted, the western producers of perishable soft-fruit crops were saying, "This will not work for us. H-2 is not a workable program for Oregon—not for Oregon—but for western soft-fruit agriculture."

They made all the same arguments that you have heard this morning about why it was unworkable, and the compromise solution to that was the SAW Program. The SAW Program is the key program for producing workers for Oregon agriculture.

The problem is that the SAW Program has not worked out as we thought it would for a variety of reasons. Actually, I think it is a bit too soon to tell.

I do not think you can look at the numbers of applicants in Oregon and correlate that to the numbers of workers who are SAW's who will be working in Oregon.

We represent numerous clients who are SAW workers who are not applying for SAW status in Oregon. They are applying in California; they are applying in Arizona; they are applying in Texas.

Many of those workers may be in our work pool. But nonetheless, nationwide, it is certainly the case that SAW has not worked out the way that we had intended.

I would like to suggest some very specific steps that could be taken to make the SAW Program more workable.

Congressman Wyden raised some questions about verification and standards of verification. This is an industry—particularly the strawberry industry in Oregon—which simply does not run on records.

There are some exceptions to that, and some farmers trying to do an admirable job of complying with the recordkeeping requirement.

But overwhelmingly, in our experience in litigation in this area, it is the case that there just are not any records out there.

It is an industry also that is typified by the use of large numbers of workers. You do not have a long-term relationship with one who comes back every year, year-after-year.

You know that he worked for you. You have, maybe, 300 workers, and it is a different crew every day, and a different crew every year.

So, when someone then appears on your doorstep and says, "Would you fill out this verification for me," you have no records to prove it. You are placed in a position as an employer to sign the affidavit, be accused of fraud, or do not help.

This was not the intent of the program. In the legislative history of the SAW Program, it was specifically stated that the standards of proof—where no records existed—the standards of proof developed under the Fair Labor Standards Act should apply.

Those say that you, basically, with worker testimony, can prove, as a matter of reasonable inference, what the wages were.

Now INS has taken a very, very narrow view on this. It is virtually essential—I think it is, as a practical matter—it is essential to have the employer verification. If you do not have it, you cannot apply.

By requiring INS to accept the Anderson *v.* Mr. Clemens Pottery test for proof of wages and proof of work, this would go a long way.

Now, there are records which exist, which for a variety of reasons—remember, this is a low-paid industry, sometimes illegally low paid—for a variety of reasons some growers who have records will not produce them. INS has uniformly refused to use its subpoena power in order to produce those worker records. It seems to me in that instance that unless INS is prepared to accept the worker's account of what happened, it must be required to use its subpoena power to find the best evidence available, and assist the worker in applying.

There are a number of other issues that undoubtedly account for the low number of SAW applicants, including a real vagueness about what is going to happen to family members. That needs to be addressed clearly if we are going to have people apply.

I would not apply for a status that would submit my wife and child to deportation, and that is the practical decision that people are having to make as we speak.

Cost is an issue. I question how many of the Eastern European, Irish, German immigrants who came through Ellis Island would have ever been allowed to get off the boat if they had been required as a precondition of entry to pay the cost of those facilities.

Yet, we have tried through the fee system under the SAW Program to pay for the whole cost to the Government in processing the applications.

Whether that is fair or not, one can argue as a practical matter, it is effectively frustrating the intent of Congress to get an adequate supply of SAW workers. These costs need to come down.

Tax problems. There is an immigration status amnesty. There is no tax amnesty, and people are starting to get hit. I spoke with a fellow the other day who has $6,000 in back tax bills and penalties going back all the way to 1982.

As we sort through it, it appears that the tax records include wages credited to his account at times when he was not in the United States—undoubtedly, someone was using his social security number—includes wages credited to his account number earned by another wage earner in his family.

It also credits him with only one dependent, or one deduction, no dependents—he has three or four. In the end, he probably owes no taxes, but his reaction is—well, I guess this SAW Program is just not going to work for me. I am going back to Mexico, or I am going back underground.

This is not helpful. Finally, there is another tax issue that might also help make the system more workable. In order to claim a tax exemption, you have to have a social security number for a dependent child over the age of 5.

If that dependent child is an alien who does not qualify for amnesty—this relates to the family unity point—you are not able to report correctly and accurately your taxes, and claim the exemptions you would be entitled to.

Finally, because it will take some time to unscramble this, an extension of the SAW application period is desperately needed, perhaps along the lines suggested by Senator Cranston's legislation.

Aside from expanding SAW as a program there are some other things we can do. We need to deal with labor housing.

Business as usual just is not going to produce the housing we need. It needs to be a crash program that someone somewhere mobilizes the relevant bureaucracies to get going on, or it is not going to happen.

We need to have better enforcement of existing standards. Some people would argue, undoubtedly, that now is not the time to be tough on wage standards. But if this is an industry that is troubled, and we are going to lose some producers, ought it not be the producers who are trying to cut the corners, not the producers who are good businessmen that are trying their best to comply with the law?

It needs to be fair and flexible, but where you have situations that are just simply grossly abusive—and that is not too strong a language to apply to this industry in some of its parts—those growers ought not to be competing with people who are complying with the law and attempting to meet these higher wage rates and working conditions that the law mandates.

Employment service has a role to play here. As we begun to rely on undocumented Mexican workers, the job service aspects of the interstate employment system have really atrophied; and the system does not work.

The growers who say that they cannot get workers that way are right. It is a system that does not work. But that does not mean that it cannot work.

There are areas along the border which are extremely depressed by the devaluation of the peso; by other factors as well.

There are workers there who are willing to work. It may not meet the whole need, but a grower ought not to have to hire his own recruiter to go down to Texas to make the system work. The employment service system ought to produce those workers.

It ought to produce workers, incidentally, who are qualified and know the work, and are not going to turn around on the first day when they see how hard it is.

I suggest exploring those kinds of alternatives in lieu of loosening the H-2A Program, and the reason for that is it is a bad program. It is a bad program for farmers, particularly in strawberries, for all the reasons that people have talked about.

I am not sure you can do much to address those problems. It is a bad system for foreign workers in many ways, because essentially it places them in the position of indentured servitude.

They are beholden to one employer who controls their whole future livelihood—their housing, their pay, and even their ability to work in the United States.

That kind of employee is docile and is not going to cause any problems, even if it means suffering substandard conditions.

It is bad for U.S. workers because U.S. workers are not perceived to be as productive—perhaps are not as productive—but they are going to be discriminated against.

For all of those reasons, I think that we ought to try everything we can to make the other remedy which, after all, Western Ag wanted, got, pushed through the Congress as part of a compromise.

Let's give it a chance to work. Let's make it work as it should work, and get on the immigration service to open this up to some. But let's not place the burden of this whole problem on the low-paid farmworkers that harvest their own crops.

[Mr. Dale's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. Both of you have made a number of points that I think are very solid, and very helpful. I think there is a real chance we could build a coalition between owners, workers, and worker advocates. I am making these changes in the SAW Program.

I think that is very sensible, because, as I have tried to touch on today, to the extent that you can do that, you solve yourself an awful lot of problems.

You effect the RAW Program, and you can only find benefit from the SAW Program. I would really like to work with you, just as I am going to with the owners, and maybe we could get a little working group together between yourselves, other advocates and owners, and farm bureau folks who testified today, and really dig in and move quickly on the SAW issues.

Senator Cranston, as you mentioned, has introduced legislation extending the time period, which seems to me a very responsible step.

We could also work together on some of these documentation and verification issues so that side of the ledger could be helped as well.

A couple of minor things I would probably quibble with a little bit, Michael. You said you felt this essentially a strawberry problem. I think it is beyond that.

Ray Steinfeld—I think Rick was here. Rick is an employer in my district—talking about the cucumber situation, basically making the argument that there are ripple effects from strawberries to cucumbers.

So, that is a minor kind of thing. I am not going to belabor it. But that would be one point that I probably want to see us look at in a little bit broader sort of way.

Your point on the tax situation, I think, is a very good one, and a very important one. We learned last year, for example, that the immigration amnesty program provides confidentiality for persons applying for permanent resident status.

Then the Tax Reform Act of 1986 requires that all information regarding residence status be turned over to the IRS.

I already, after being contacted with your groups and others, have introduced a legislative initiative to change it.

I think we are going to get that as part of the technical corrections bill, which seems to me would be a sensible way to go and make the immigration amnesty provision the one that provides confidentiality for people, and takes precedence over the tax reform status provision which requires that all the records be turned over.

I think the only question that I would want to ask in addition, because both of you made some good points, is with respect to some of these assistance programs.

Given the fact that resources are scarce, if you had to prioritize where you would want to see the bucks go in terms of improvements, where would you do it? Would it be housing or some other area?

If you had some dollars, where would your priorities be so that additional funds could be put into the effort to bring about reform with a sense of fairness.

Ramon, do you want to start?

Mr. **Ramirez**. Yes; first of all, what we like is enforcement of minimum wage standards. I think that would be one of our priorities.

I think another priority is going after some of these labor contractors who are just abusing people and, in some cases, are just bringing up people who qualify and are denying them the right to qualify.

I think we should go after those people. I think that we looked at this bill, this immigration bill as a labor bill. I think that we should enforce some of the existing labor standards protections for farmworkers now.

I think that is where the money should go. I think there is a problem with housing, but I am not too sure that the kind of housing we need in terms of bringing in, or putting back the bucks for developing labor camps, so that we could just bring in the H-2 workers.

I do not think the money should go there. I think there is a lot of U.S. citizen farmworkers or legal resident farmworkers who need housing. There is definitely a labor shortage in housing.

But I do not think that money—our tax money—should go to bring in guest workers who are going to displace us. So, I think we should just put the bucks into doing surveys.

I think some of the suggestions here about whether or not there is a shortage—I think we should put some money into that.

I think we should put money into enforcement of labor housing.

Chairman **Wyden**. Michael, dollars for priorities, in your view.

Mr. **Dale**. In my view, I think I would agree with Ramon's point about enforcement, although frankly—actually, in all three areas I am going to talk about enforcement, housing, and job service; a part of it is dollars, but it is not really just dollars, it is an attitude. I mean, this is a priority problem. It needs to be dealt with as a priority.

My sense is that those agencies are doing that. So, just simply spending some more money on the problem will not solve the problem.

If those agencies are going to move aggressively, it will probably cost a little bit more money to do that, and those are the three areas that I target.

I am not sure that this surveying is a particularly good expenditure of funds for a couple of reasons.

I will probably be hung by the ears for saying this, but I think probably the AWER for the strawberry industries is higher than certainly the prevailing wage that is being paid.

How does it result that it comes out that way in the data? Well, remember what the gentleman from the Department of Agriculture said. You report the number of hours of labor; you report the number of dollars paid. OK.

It does not take very much on a report that is going in to the Federal Government to divide one by the other, and if the average hourly rate, reporting it honestly, turns out to be $2.90, you have to wonder about turning that in.

So, maybe you cut the hours down some. The dollars you have already reported in taxes, so you have to put the dollars in right.

So, the net result is you get a skewing in the survey that perhaps has fewer dollars spread over—the scene of dollars spread over fewer numbers of hours than were actually worked, and that gets a higher average wage rate.

Remember, these surveys are all self-reporting samples, and I am a little bit reluctant to say we should just go and change the survey method.

One of the things that we have been told by legal service advocates in other parts of the country is that one of the things that the expensive consultants that are going around selling services to farm groups are doing is they are telling them how to fill out the surveys so that the wage rates come out right.

So, I am sort of a little skeptical of redesigning a system that makes it easier to do that. I am not sure it gets you very much farther.

I think that wage rate is a reasonable wage rate in the rest of agriculture outside of strawberries—certainly a reasonable wage rate for strawberries if you think about the nature of the job.

I am not saying it is reasonable in terms of what people are paying or could pay economically, or under current conditions.

But, if you think about the job, who do you know that would travel hundreds or thousands of miles to live in substandard conditions, work long hours at hard physical labor on a job that is going to last for 3 to 4 weeks, and there may be no job when you get there, because crop conditions may vary, and we do not know if work is going to be available or not.

How many people do you know that would take a job at $5.20 an hour?

Remember, that $5.20 has to support a family, whether you are employed 40 hours a week, 50 weeks a year, or whether you are employed a few weeks, catching work wherever you can find it, and traveling from place to place.

So, I do not think it is an unreasonable way to look at in that way.

Chairman Wyden. Well, thank you both very much. I will follow up on all of your suggestions.

I think your point of trying to make the SAW Program work, in particular, is a very valid one. The H-2A Program, I think, has assumed this enormous importance in people's eyes because the SAW Program has not worked.

To the extent that we can build a coalition between workers, and their advocates, and the growers to try to make that SAW Program work, all we do is render vastly less important the H-2 Program.

So, my colleague, since he has no questions, and unless you all have anything else you would like to add, we will excuse you, and look forward to working with you.

We will be back to you very promptly.

The subcommittee is adjourned.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT OF REGIONAL COMMISSIONER JAMES BUCK BEFORE THE SUBCOMMITTEE ON REGULATIONS AND BUSINESS OPPORTUNITIES.

Mr. Chairman and Members of the Subcommittee:
I am pleased to have the opportunity to be here today to discuss the H-2A program. I would like to submit a copy of my testimony for the record and would be pleased to take questions following my brief statement.

The H-2A program was created by the Immigration Reform and Control Act. Before this program was created, agricultural workers were admitted under regulations as H-2 workers in a similar fashion as non-agricultural workers. Employers were required to obtain a labor certification from the Department of Labor to prove that there were not sufficient American workers to perform the proposed employment and prove that the working conditions were such that American workers similarly employed were not adversely affected. The employer then had to file a petition with INS to establish that the aliens to be hired qualified for the employment.

Section 301 of IRCA separated agricultural employment from the H-2 program and established the H-2A program for such employment, in addition to modifying the applicable rules. There were three basic reasons for this change. The first was to streamline parts of the labor certification process and make the H-2A program more responsive to the needs of agriculture. The second was to enhance provisions meant to ensure that foreign agricultural workers were imported only where qualified, willing and able American workers were not available. The third was to enhance labor standards protections.

During its history the H-2 program was the scene of extensive conflict between growers and organizations representing American agricultural workers. The H-2A program was a carefully crafted compromise intended to eliminate the worst problems for both sides.

The H-2A program became effective on June 1, 1987 with the simultaneous publication of interim rules by the Department of Labor and the Immigration and Naturalization Service. The program has been in use since this date, although employers who started the process before June 1 were unaffected, and thus last year many temporary agricultural workers were admitted as H-2 workers both before, and after, June 1.

It wasn't long after the program started that the conflict that had typified the H-2 program appeared in the H-2A program. Last year's developments in the Northwest were one example. Employers referred to government induced shortages of workers, and to crops rotting in the fields. Employee organizations and several news and political organizations claimed these cries were mostly fiction, designed to pressure INS to loosen its policies regarding the admission of foreign agricultural workers.

While these claims and counter-claims were being made, the H-2A program continued to operate. Its flexibility was demonstrated by the government's response to the situation here in the Northwest. For example, last year the Immigration and Naturalization Service gave priority consideration to H-2A petitions filed in the Northwest in order to speed the process.

By last November, when much of the field work in many agricultural sectors had ended, labor certification had been granted to allow employers across the nation to import over 13,000 foreign agricultural workers. This was in addition to the workers admitted under the H-2 program based on applications filed before June 1. The Department of Labor has noted that employers in agricultural sectors which had not used the prior H-2 program filed H-2A applications. This included applications by employers in the nursery, grape cultivation, dairy, poultry and walnut industries.

There are a number of examples of industries and employers who have used the H-2 and H-2A programs with success. One of the most prominent of these in the Northwest has been the Snake River

Farmer's Association in Idaho, which has used the program to deal with a shortage of irrigators.

Sources within the agricultural industry have indicated a significant increase in employer interest in the H-2A program during the winter. In fact a February 28, 1988 article in the Wenatchee World indicates that the Walla Walla Valley Fruit and Vegetable Growers Association has applied for a labor certification for 207 H-2A workers to supplement the 500 American workers it has commitments from. Other employers and organizations in the Northwest have also expressed heightened interest in the program.

It has been hard to measure the overall effect of the H-2A program during its less than one year existence because at the same time the Service has been administering the short-term Special Agricultural Worker, or SAW, adjustment program. As of March 8th, the Service has received 306,644 SAW applications and the Department of State has received another 5,441. Based on industry projections of the overall numbers of undocumented workers who have annually worked in agriculture, it would appear that this program will meet a very large percentage of growers' needs for foreign labor.

In the Northwest the uncertainty of how effective the program can be was further muddied by the timing and size of last year's harvests combined with the dislocations involved with the implementation of the Immigration Reform and Control Act. Analysts may not be fully able to calculate its effectiveness until after employer sanctions fully extend to all of agriculture.

As I previously indicated, the H-2A program was a carefully crafted compromise meant to address many of the concerns of both the growers and organizations representing Americans who work in agriculture. The program has only been in effect since June 1987. But many growers have expressed interest in it, and it appears it may grow to fulfill its intended role.

In closing I would like to again thank you for this opportunity to discuss the H-2A program. If you have any questions, I would be pleased to take them at this time.

STATEMENT OF
JAMES E. BAILEY, ASSOCIATE DIRECTOR
OFFICE OF TRAINING AND EMPLOYMENT SERVICES
SEATTLE REGIONAL OFFICE
U.S. DEPARTMENT OF LABOR
BEFORE THE SUBCOMMITTEE ON REGULATION AND BUSINESS OPPORTUNITIES
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

March 21, 1988

Mr. Chairman and Members of the Subcommittee:

On behalf of the Department of Labor, I would like to thank you for the opportunity to testify on the activities undertaken by our Seattle Regional Office to fulfill our responsibilities related to administration of the H-2A program under the Immigration Reform and Control Act of 1986. The Seattle Regional Office is responsible for H2A program activities in four states: Alaska, Idaho, Oregon, and Washington.

For some 15 years prior to 1986, we had not received a request from any of our states for labor certification for temporary agricultural workers except for a program involving sheepherders which operates primarily in Idaho. In the Fall of 1985, we were approached by representatives of the Snake River Farmers Organization operating out of Southern Idaho. They expressed interest in the possibility of bringing in temporary non-immigrant alien agricultural workers under the H-2 program. We worked with the Snake River Organization over a period of several months, assisted by the Idaho Department of Employment, to develop a program which served the needs of the growers while at the same time meeting the regulatory requirements and taking into consideration input from workers advocate organizations. During the 1986 season, some 217 employer requests for certification were approved covering 1,035 irrigator positions. During the 1987 season, a total of 358 certifications were granted covering 1,841 workers.

During the seasons of 1986 and 1987, staff from our regional office met with many grower organizations in the States of Washington and Oregon. We explained to them the benefits and requirements of the H-2 program. Only the Idaho program operated during this two-year period of time.

With the passage of the Immigration Reform and Control Act (IRCA), a resurgence of interest on the part of the farming community in the Northwest in the new H-2A program resulted in our Department, in conjunction with the Immigration and Nationalization Service, State Employment Security Agencies, and State Departments of Agriculture, once again meeting with many farm organizations primarily in the States of Oregon and Washington. While it appeared likely that H-2A applications would be received during the 1987 season, none were filed.

As we begin the 1988 season, the only applications received to date, which are being processed for certification as in the past two years, have been from members of the Snake River Farmers Association in Idaho. In addition, a small group of fruit and vegetable growers in the Walla Walla area of Eastern Washington filed applications covering some 200 workers. However, those applications contained deficiencies and have been returned to the employers for modification.

It is my understanding that the Region's experience since the H-2A program became effective June 1, 1987, parallels the National experience. While a great deal of interest has been expressed by employers, very few have actually filed applications for certification. Certifications are running about the same as they have in previous years, between 21,000-22,000 workers. It appears that it is too early to tell how great an impact IRCA will have upon agricultural employers. This will probably become clearer when the employer sanctions provisions of the law take effect for producers of perishable commodities in December of this year.

In order to comply with the congressional mandate in IRCA, the Department of Labor promulgated interim final regulations for the H-2A program on June 1, 1987. With your permission Mr. Chairman, I will proceed to summarize briefly the usual procedural steps and conditions in the application and approval process in the regulations which are designed to assure employers an adequate labor force on the one hand and to protect the jobs of U.S. workers on the other, as the statute requires.

Employers are required to file applications at least 60 days before date of need for the worker. The employer or an authorized agent files the application with the regional office of the Department of Labor. As a part of the application, the employer describes the wage, hours, and working conditions of the job offered, including the length of employment and a detailed description of the job to be done. In appropriate places on the form, the employer must describe his recruitment plan and assure his willingness to recruit domestic workers as directed by the Department. This would include newspaper and radio advertising in areas of expected labor supply and, if appropriate, actual positive on-site recruitment in areas designated by our Department. The employer must guarantee to pay U.S. workers on the same basis as the H-2A workers. The hourly rate must also be either the applicable adverse effect wage rate, federal or state minimum wage, or the prevailing hourly wage rate whichever is higher. The adverse effect wage is established every year by the Department of Labor for every state except Alaska. As specified in our regulations, the adverse effect wage rate for each State is set equal to the average hourly rate for field and livestock workers in the previous year, as determined by Department of Agriculture statistical surveys. Employers may pay their workers on a piece rate basis if they wish. However, the hourly minimum rate must be guaranteed.

Housing -- The employer must provide free housing to all workers who are not reasonably able to return to their residences the same day. Such housing must meet appropriate Federal or State standards.

Meals -- The employer must provide either three meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare their own meals. If meals are provided, an employer is allowed to charge a stated amount for each meal.

Transportation -- The employer is required to reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work, if the worker completes 50 percent of the work contract. The employer must provide free transportation between the employer's housing and worksite for any worker who is provided housing. Finally, upon completion of the work contract, the employer must pay reasonable costs of the worker's subsistence and return transportation to the place of recruitment.

Workers' Compensation -- The employer must provide workers' compensation where it is required by State law and, where it is not required by State law, the employer must provide equivalent insurance for all workers.

Tools and Supplies -- The employer must furnish at no cost to the worker all tools and supplies necessary to carry out the work unless it is common practice in the area and occupation for the worker to provide certain items.

3/4 Guarantee -- The employer must guarantee to offer each worker employment for at least 3/4 of the work days in the work contract period and any extensions.

The employer is required to keep accurate records with respect to a worker's earnings. The worker must be provided with a complete statement of hours worked and related earnings on each pay day. The worker must be paid at least twice monthly and the worker must be provided a copy of the work contract or job order.

If the employer's initial application is accepted, the regional administrator will make a certification determination 20 days before the date on which workers are needed. During the period between approval of the application and certification determination, the employer and the Department of Labor, with the assistance of the State Employment Security Agency, recruit domestic workers. During that period, the Department also assures that all housing is inspected and meets the appropriate standards and checks to assure that workmen's compensation coverage will be provided to all workers. The final step in the process prior to certification for the importation of alien workers is to examine the recruitment report and subtract from the total certification request the equivalent number of domestic workers which have been found to be able, willing, qualified, and available for the employment offered.

There are special provisions shortening these timeframes for first-time employers of H-2A workers and in emergency situations. The regional administrator may waive specified time periods provided the regional administration has an opportunity to obtain information that U.S. workers are not available.

Normally, a regional office is expected to review and notify an employer of acceptability of an application within 7 calendar days.

Mr. Chairman, this concludes my prepared statements. I have brought with me several copies of DOL publications summarizing the procedures and requirements of the H-2A program. These have been designed for employers who are interested in the program. I will be pleased to answer any questions that you and the other members of the Subcommittee may have relating to the status of the program and its procedures. Thank you very much.

NATIONAL AGRICULTURAL STATISTICS SERVICE

Statement of Raymond R. Hancock, Deputy Administrator for Operations, National Agricultural Statistics Service (NASS), U.S. Department of Agriculture, before the House Subcommittee on Regulation and Business Opportunities.

Mr. Chairman and members of the Committee, it is an honor to appear before this Committee to present background information regarding the data collected by NASS for the H2-A program.

Activities of the National Agricultural Statistics Service (NASS)

The NASS administers the USDA's program of collecting, compiling, and disseminating current national and State agricultural statistics. Research designed to improve the statistical methods and techniques used to produce agricultural statistics is also conducted. In addition, NASS performs reimbursable survey work for other Federal and State Agencies.

Statistical data developed by NASS on the Nation's agriculture are essential for the orderly development of production and marketing decisions by farmers, ranchers, and other agribusinesses. These agricultural data series are also used for monitoring the everchanging agricultural sector and for making and carrying out agricultural policy relating to farm program legislation, commodity programs, agricultural research, rural development, and related activities.

.ne NASS agricultural statistics program is conducted through 44 State Statistical Offices (SSO's) servicing all 50 States. This arrangement efficiently serves the agricultural data needs at both the State and Federal levels and eliminates duplication of effort.

NASS Farm Labor and Wage Rate Data Series

The NASS quarterly agricultural labor and wage rate data series provides estimates of the total number of persons (farm operators, unpaid family members, and hired workers) doing farm work during the survey week of the 12th of the month. Wage rates and average hours worked data are also estimated. Survey data are obtained from probability surveys conducted in January, April, July, and October with farm establishments contacted.

umber of farm laborer and wage rate estimates are currently published in the Farm Labor report for 18 regions. Three of the regions are individual States and the others are groups of States. The regions are defined by geographic area in table 1.

Table 1: Farm labor report: Geographic regions

Regions	States Included
Northeast I	CT, ME, MA, NH, NY, RI, VT
Northeast II	DE, MD, NJ, PA
Appalachian I	NC, VA
Appalachian II	KY, TN, WV
Southeast	AL, GA, SC
Florida	FL
Lake	MI, MN, WI
Cornbelt I	IL, IN, OH
Cornbelt II	IA, MO
Delta	AR, LA, MS
Northern Plain	KS, NE, ND, SD
Southern Plains	OK, TX
Mountain I	ID, MT, WY
Mountain II	CO, NV, VT
Mountain III	AZ, NM
Pacific	OR, WA
California	CA
Hawaii	HA

Farm Employment Data

NASS has provided farm employment estimates since 1909. From 1909 through 1924, aggregate estimates of farm employment consisted of annual averages for the Nation. From 1925 through 1933, monthly estimates of family workers and hired workers were published for the United States. Regional breakdowns were started in 1934 and monthly estimates, by State, began in 1950. In January 1975, with the introduction of survey methods using probability sampling, quarterly estimates replaced monthly estimates. Quarterly estimates were dropped following the April 1981 survey because of a cutback in program funding. An annual survey was conducted in July of 1982 and 1983. In July 1984, the quarterly estimating program was reinstated as a joint effort of the USDA and the Department of Labor (DOL) to collect more detailed employment and wage rate data. The Quarterly surveys were to provide State and regional estimates. The January survey is conducted in only 7 States - Arizona, California, Florida, Hawaii, New Mexico, Oklahoma and Texas. During April, July, and October quarters, the survey is conducted in all States except Alaska.

The NASS series on number of farm workers has estimates for (a) farm operators and (b) family members working fifteen hours or more during the survey week without receiving cash wages, and (c) hired workers (for pay).

Wage Rate Data

Annual average wage information was issued intermittently beginning in 1866, and annually from 1909 through 1922. From 1923 through 1947, wage rate estimates were published quarterly for daily and monthly wages. Beginning in 1948, wage rate estimates were published quarterly for hourly, daily, weekly, and monthly wages.

Starting in 1974, wages were collected by method of pay including per hour for piece rate, other than piece rate, hourly rate (perquisites provided), cash wages only (any method of pay but no perquisites), and wages per hour (no perquisites). Pay categories were modified in 1982 to make the series more analogous with wages reported in other sectors of the economy. Wage rate breakdowns are reported for workers paid strictly on an hourly basis, on piece rate converted to an hourly wage rate, and other methods of pay converted to an hourly basis.

Wage rate data are also published by type of work. Many workers have more than one job, but the respondent classifies the workers according to how most of the time was spent during the survey week. Starting in 1974, wage rate groupings were reported as: field and livestock, packinghouse, machine operator, maintenance and bookkeeping, and supervisor. Maintenance and bookkeeping workers were included as other agricultural workers beginning in July 1977. Wage rate breakouts by type of work performed were limited to field, livestock, supervisory, and others starting in 1982.

With reinstatement of the quarterly program in July 1984, wage rates are currently published by region (table 1) for method of pay (hourly, piece rate and other) and type of work (field, livestock, field and livestock combined, supervisory and other). These rates do not include value of benefits some workers are provided such as housing, food or transportation.

Survey Design and Concepts

A non-probability mail survey was the primary data collection method for both farm labor and wage information prior to 1975. NASS implemented a probability Farm Labor survey in January 1975, based on a multiple-frame sampling concept. This concept utilizes two sampling frames - a list frame and an area frame. The target population is all farm operators in all States but Alaska.

The list universe for farm labor is extracted from a general purpose list frame constructed and maintained by NASS for all agricultural surveys. Specifically, the farm labor list frame is stratified into groups of farms considered alike with respect to expenses or number of hired workers. All farms with an estimated farm value of sales (FVS) above $100,000 as well as farms with hired worker control data are eligible for sampling from the list. In five States, the FVS cutoff has been lowered to $80,000. The list of employers account for about two-thirds of the paid workers. The list sample selected by State is a simple random stratified sample drawn in replicates. Each State interviews two replicates each quarter and rotates one of these for the following quarter so there is a 50 percent list rotation from quarter to quarter. The U.S. list sample size for the April, July, and October survey quarters is about 11,000 respondents. The seven State January list sample consists of about 3,400 contacts.

The area frame contains all land in the Nation so all employers are represented when sampling. The Farm Labor area frame respondents are a subsample of farm operators living in small area sampling units called tracts. These farm operators were a special category of respondents who were contacted during the most recent annual Farm Costs and Returns Survey (FCRS) and were determined not to be on the Farm Labor list universe.

The area frame is used to estimate for employers not on the list frame. These are usually operations with few workers since the list is designed to include operations with over $100,000 of farm products sold. The area frame labor operations account for about one-third of the paid workers.

Definitions

Farm work is defined as tasks performed on an operation engaged in the production of agricultural commodities. Farm work excludes work done off the farm, work done on the farm which materially changes the form of the product, domestic family work in the home of the operator, hauling farm products from the farm to distant markets, or nonfarm work done on the farm.

Self-employed workers (operators) are those persons who make operational decisions without pay, but share in the returns from the farm or ranch. This concept was adopted in 1982 to provide data users with an agricultural series analogous with other employment data series. Only one person was designated as the operator of a farm or ranch prior to 1982. With the adoption of the self-employed category, all active partners working on the farm are counted as self-employed, where in the past the partners were listed in the unpaid family category. Self-employed workers are counted if they devote at least 1 hour to operation of the farm or ranch during the survey week.

Unpaid workers are those individuals other than the farm operator or partner(s) that performed agricultural work on the farm operation and did not receive cash wages. This could include spouse(s), children, and parents of the operator. Unpaid workers must work at least fifteen hours or more during the survey week to be counted.

Hired workers include both family members and other workers who are paid for working on agricultural jobs for 1 hour or more during the survey week. Paid workers may be counted more than once if they worked on two or more farms during the survey week. The number of hours worked and wages earned are not duplicated.

Data Collection

Data are collected by our 44 State Statistical Office (SSO) staff using mail, telephone and personal interviews. The trend in recent years is to call respondents for survey data from the SSO using trained telephone interviewers. Seventy percent of the survey data are obtained in this manner. Personal interviews by field staff are used for establishments with a large work force, and establishments which require special handling or nonresponse follow up.

All survey data are machine edited for consistency and valid relationships before machine summarization. Statisticians are responsible for data edit reviews, data summaries and setting survey estimates for farm employment, and wage rates. Data are then published in the Farm Labor release issued about the 15th of February, May, August and November. No data are released until 3:00 P.M. ET on the scheduled release date. The release schedule is announced each December for the following year.

Estimates

Direct expansion of the survey data provide indications used for setting estimates. Time-series relationships are maintained to detect unusual situations that may affect the estimates. Weather conditions and work activities during the survey week are also considered. Gross wages are divided by hours worked for all methods of pay to derive an hourly rate. The amount paid to employees is that before any deductions for taxes, insurance, or other benefits. A value is not placed on perquisites provided, such as housing, room and board, or transportation.

Data Reliability

The coefficient of sampling variation (CV) is a statistical measure of the variation in survey data that occurs by chance because of probability sampling. CV's for regional estimates of the number of hired workers, self-employed and unpaid workers generally range between 10 and 20 percent and are less than 6 percent at the National level. Wage rate CV's range from 2 to 4 percent for published regions and the United States.

Limitations of Survey Data

The current NASS Farm Labor survey does not provide a measure of total labor input going into agricultural production. The Farm Costs and Returns Survey conducted by NASS each year provides an estimate of total hired labor costs. Primarily, the Farm Labor Survey provides a measure of quarter-to-quarter and year-to-year change in levels of farm employment and wage rates.

Estimates of farm employment include both persons who work full time during the survey week and those who work part time. Thus, any averages or projections that may be derived from the data should not be interpreted as equal to a corresponding number of man-years of labor used in agriculture. Also, there may be some duplication in the count of workers, as those persons working on more than one farm during the survey week can be counted more than once. Duplication of this type is inevitable in a survey based on reports from employing establishments.

The NASS Farm Labor survey is not designed to provide demographic data about the agricultural workforce. This is especially true for statistics often requested about migrant workers. The Current Population Survey or other household surveys are better suited for this purpose. In these surveys, the sampling units are employee households, whereas NASS sampling units are employers.

Use of wage rate data should be made with full recognition of what the data measure. Wage rates are in terms of payment per unit of time during specified weeks during the year and are subject to many variables. They are not a measure of earnings nor do they include the value of fringe benefits such as housing, meals or other such perquisites. The unmeasured value of additional benefits provided to many agricultural workers may add substantially to the real income and incentives of the workers.

This concludes my statement, Mr. Chairman, and I will be happy to respond to your questions.

United States
Department of
Agriculture

National
Agricultural
Statistics Service

Washington, D.C.
20250

RECEIVED
APR 5 1988
Hon. Ron Wyden

Honorable Ron Wyden
House of Representatives
Washington, D.C. 20515

Dear Congressman Wyden:

The opportunity to review the farm labor survey activity of the National Agricultural Statistics Service (NASS) before your subcommittee hearing in Portland, Oregon was appreciated. Testimony presented by several of the witnesses certainly supported the need for more detailed statistics than NASS's current farm labor survey program provides. A major concern that I heard, as related to NASS, was the lack of individual state wage rate data. Since this information is used in determining an Adverse Effect Wage Rates (AEWRs) for a state, the need for reliable state data is apparent. In addition, the need for monthly wage rate data for individual commodity wage rates was raised.

In response to your request to provide cost estimates for improving NASS's farm labor survey activity, three options were developed. A brief review of the current survey program and the three options is attached. Each option would provide significantly more data than NASS's current program.

In evaluating these options, we believe option number 3 should be given the greatest consideration. Under this plan, wage rate data would be collected during the growing and harvesting season for most fruit and vegetable crops, the major users of H2-A program workers.

An additional consideration you should be aware of concerning NASS's farm labor survey activity, is the FY 1989 Budget request for NASS. The request includes an increase item of $1,200,000 for NASS to meet the requirements of the Immigration Reform and Control Act of 1986. These funds would be added to expand the current farm labor survey program and would be directed towards developing data for estimating national agricultural labor needs. These estimates would be used in determining the number of replenishment alien workers to be admitted to the United States to offset any shortages.

If Congress appropriates the $1,200,000 as requested in the FY 1989 budget request, NASS might not need the full $2,000,000 identified as the cost for option 3. However, much of the $2,000,000 would be needed for the additional sample size requirements.

Sincerely,

Raymond R. Hancock

RAYMOND R. HANCOCK
Deputy Administrator
for operations

Attachment

Review of National Agricultural Statistics Service Farm Labor Survey Program and Various Option for Improvements

NASS Current Farm Labor Survey Program

NASS conducts agricultural labor surveys in seven States (AZ, CA, FL, HI, NM, OR, TX) in January and in all States in April, July, and October. These surveys provide estimates of self-employed, other unpaid workers and hired farm workers as well as current data on wage rates. Data pertain to the one week period during the survey month containing the 12th day.

State data are published for only three states -- California, Florida, and Hawaii. All other States are published in regional groupings.

The two main weaknesses of the current program are (1) the lack of state wage rate data, especially since the data are used to determined AWERs, and (2) the current quarterly survey months miss much of the seasonal harvest activity for specialty or highly perishable crops in many states.

Options for Improving the NASS Farm Labor Survey Program

Option 1 -- Current Survey -- Increase Sample Size.

Nationally, NASS would increase the sample size by 8,500 each quarter. This increase in sample size would permit wage rates to be published quarterly for all States.

Additional funds required $1,700,000.

Option 2 -- Monthly Surveys - All States

Conduct monthly surveys in all States with a sample size sufficiently large to permit wage rates to be published every month for each State. Reduce the non-quarterly month questionnaires to a minimum by deleting number of workers, self employment and unpaid workers in the non-quarterly months. Publish these items only in the quarterly months.

Additional funds required $3,600,000.

Option 3 -- Monthly Surveys April - October - All States

Use current survey questionnaire in April, July, and October; for May, June, August, and September use a reduced version of the questionnaire that is designed to collect wage rate information only. Sample size would be increased sufficiently to permit wage rate information to be published for each State for each month.

Additional funds required $2,000,000.

Option 4 -- Commodity Specific Wage Rate Surveys

Staff members spent considerable time discussing this aproach. The agency can make surveys of this type to determine wage rates for a specific commodity. Implementing a national program of this type is difficult because of the large number of commodities and the variation in timing that will occur national. Also, a weakness would be the need to continue the current quarterly survey program to develop quarterly estimate on number of workers. No cost estimates were developed.

TESTIMONY OF MIKE KAIEL

House of Representatives Subcommittee
On Regulation and Business Opportunities
March 21, 1988

Background

Thank you for the opportunity to testify on an issue of major importance to Oregon's agricultural industry.

Agriculture is estimated by the State Department of Agriculture to be a multi-billion dollar a year industry in Oregon. Many commodities in the industry are cash crops that are highly dependent on hand labor. The industry relies on the contribution of those commodities for the economic stability of the total industry, and in turn, the state relies on the contribution of the agricultural industry for the economic stability of the state.

With the passage of the Immigration Reform and Control Act of 1986 (IRCA), questions and concerns have arisen regarding the future of agriculture in Oregon due to a potential shortage of workers to harvest the crops.

It is possible that crops such as strawberries and cane berries could be entirely eliminated within three to four years. Should this happen, we could see many small communities in Oregon devastated at a time when Oregon is still trying to recover from the last recession.

A specific example is the strawberry industry. In a survey commissioned by the Governor's Immigration Reform and Control Act Coordinating Committee and conducted by the Oregon State University Extension Service, it was determined that the strawberry industry alone employed better than 39,000 pickers in 1987. Of these 39,000 pickers, about 17,400 were undocumented aliens who harvested better than 65 percent of the strawberries. (It should be noted that a record loss was also experienced in 1987 due to a shortage of available workers.) Because foreign workers are two to three times as productive as domestic workers, the number of additional pickers needed to replace the undocumented aliens would range between 35,000 and 40,000. The impact would not only fall on the strawberry growers but also on the packing plants, the transportation carriers and the consumer.

ISSUE:

With this background, the issues in question then become:

- Is IRCA having an adverse affect on the supply and availability of agricultural laborers in Oregon? and
- Are the provisions established within IRCA to alleviate or remedy any such adverse labor shortage viable for Oregon?

Discussion:

Is IRCA having an adverse affect on the supply and availability of agricultural laborers in Oregon?

While there is no simple answer to this question, the answer would appear to be yes, especially in 1989 when the agricultural portion of IRCA will be in full effect. Discussions with and statements by growers, aliens, community based agencies, the Immigration service and others throughout the state have led to the identification of potential adverse impacts to the agricultural labor supply related specifically to IRCA. Among those issues are:

1. Initially, confusion about and inaccurate information regarding the legalization process deterred many eligible persons from applying for legalization and working during the application process. Many individuals continue to be confused as to whether or not they have to legalize in their native country or if they can legalize here, as well as a lack of understanding of the qualifications for legalization. For example, three border stations have been established to assist individuals eligible for documentation. Can these individuals apply at one of the stations and come immediately to the United States to start work? Questions such as these are deterring many individuals from even applying. This confusion stems from lack of education. If INS acts quickly between now and December 1, 1988, significant numbers of Seasonal Agricultural Workers (SAW's) could still become eligible to work.

2. Many growers have reported that individuals who they assisted with legalization are now moving to other employment opportunities outside of the agricultural industry. There is no requirement that individuals remain in agriculture after attaining their status, and job opportunities outside of agriculture are often more attractive.

3. Actions being taken in home base states such as California and Texas to encourage workers to legalize and remain in their states to work is drying up the historical migrant stream flow to Oregon and the Northwest. These actions include additional housing and higher wages. Oregon has relied heavily on the migrant stream, which has accounted for as much as 65 percent of the farm workers in past years. The seasonal workers who live and work in the Northwest fall far short of the workers needed.

4. Alternative programs for bringing in workers from other states, such as the Employment Service Job Clearance Order System, have not worked in Oregon. Aside from the costs involved in recruiting and transporting workers from states such as Texas, the workers willing to come to Oregon are not familiar with the work and cannot productively produce.

It must be concluded that the cumulative effect of these factors will cause a major shortage of agricultural laborers in Oregon over the next few years, starting in 1989. The extent of the shortage cannot be determined because of other mitigating factors, such as weather and market demand. If we take only the strawberry industry and assume half of the nearly 18,000 undocumented aliens become eligible, the growers will need at least 20,000 replacement workers. Clearly this is a potential crisis of significant magnitude.

Are the provisions established within IRCA to alleviate or remedy any such adverse labor shortage viable for Oregon?

Three provisions of IRCA address the worker shortage issue. The first is the National Agricultural Commissions; the second is the Replenishment Agricultural Worker provisions (RAW); and the third is the H-2A program.

The National Agricultural Commission provided for in section 304 of the Act is established to study the impact of IRCA on agriculture and report to Congress by the end of 1991. It appears no one from Oregon or the Northwest has been selected to serve on the commission. In fact, many of the individuals nominated to the commission are federal government employees. This is unfortunate as the problems which the Northwest, and Oregon in particular, are experiencing are different from and more acute than most other states including other agricultural states. There is a distinct possibility that Oregon's problem will be evaluated and recommendations for remedial action will be made by bureaucrats from Washington, D.C. and some special interest groups from California.

While it may be too late to address the question of representation, if some of the funds to be appropriated for the commission could be designated for Oregon, it would still be possible to accurately report the problems unique to us. A recent example may help underscore the importance of this issue. A national study being conducted by the General Accounting Office (GAO) to measure the available labor supply of agricultural workers is substantially underfunded. As a result, the GAO sample will include no more than 30 Oregon growers. In contrast, the strawberry survey recently completed by the state included valid returns from over 150 growers. A larger data base is necessary to measure the problems unique to Oregon.

The RAW program was designed for the express purpose of allowing replacement workers to enter the country legally in future years to fill the labor void that will be created by SAW workers who opt not to continue working in agriculture after obtaining legal status. The RAW program at this juncture appears not to be a viable alternative as the RAW admission requirements will be determined, in large part, on the number of persons who legalize under the SAW program. While Oregon has the majority of its legalized aliens failing under this category, the fact remains that national and Oregon figures for SAW's are significantly lower than expected. In a recent discussion with U.S. Department of Labor and Immigration personnel, it was stated that because of the low number of SAW legalized aliens there may be few or no RAW aliens admitted. This is based on the assumption that the lower than expected SAW numbers are occurring because there are sufficient numbers of domestic workers. As discussed previously, this is not the reason for the low numbers.

The RAW formula has not yet been developed. If it is tied to the diminishing supply of SAW's as originally conceived, the RAW program will fail. Efforts must be made to accurately project worker requirements and set the RAW figures accordingly, not base it on artificially low SAW numbers.

The most talked about component of IRCA is the H-2A program. The program intent is to allow growers the opportunity to bring in guest foreign workers if they can establish that a shortage exists of domestic workers who are willing and able to perform the needed labor. While H-2A provides a mechanism for bringing in foreign workers, it is really designed to protect domestic workers. The majority of growers who have studied H-2A feel it is highly unlikely that the program will work in Oregon. A major concern centers around the fact that most labor intensive operations are small or medium sized operations which cannot absorb the cost associated with H-2A. H-2A is not designed for individual operations.

Growers also point to the many requirements of the program. This includes paying the fee to the U.S. Department of Labor which could run up to $1,000; undertaking extensive recruitment activities which growers are not in the business of doing; guaranteeing the payment of a wage not less than the state determined Adverse Effect Wage Rate (AEWR), which for Oregon has been assessed at $5.26 an hour; providing housing, meals, worker's compensation benefits, transportation, tools and supplies, and other miscellaneous provisions.

The two factors that have drawn the most concern are the AEWR and the housing provisions. Growers have taken great exception to what they describe as an artificially high AEWR. Growers question the methodology used in determining the AEWR; part of the reason for the existing methodology is lack of funding for the U.S. Department of Agriculture which would allow for a more comprehensive survey.

There are several major issues regarding the housing provisions. First, there is not sufficient housing available for growers to use if they wish to implement H-2A. A study completed in 1985 by the Bureau of Labor and Industries identified the lack of decent, affordable and safe housing for farm workers. The need is estimated at $40 million. This lack of housing was reinforced by the strawberry survey which showed that 80 percent of the growers who responded did not have the required housing. Second, little financing exists at the federal, state or private level to finance construction or rehabilitation of farm labor housing. What little federal funding exits through FmHA ($10 million annually) must be competed for on a national basis. Third, it is uncertain which housing standards are applicable in the inspection phase of the program. The choices are state Accident Prevention Division standards, Wagner-Peyser Standards or federal OSHA standards. As a result, growers are often faced with dual state and federal inspections involving different standards.

U.S. Department of Labor officials have met with growers in various forums throughout the state and have heard these and other comments. The Department's position is that they are bound by existing federal regulations which they apply rigidly. The Department further states that the primary intent of H-2A is the protection of domestic agricultural workers. The growers ability to bring in foreign workers is only a secondary benefit and the not the primary purpose of the H-2A provision.

CONCLUSIONS:

From statements made throughout the state and by federal immigration officials themselves, it appears that Oregon will suffer from a shortage of legal agricultural laborers for years to come. The alternatives offered in the statute appear, at this point, to be of little use in Oregon.

The Governor's Immigration Coordinating Committee, through its labor subcommittee, is willing to work closely with impacted parties to seek effective and prompt resolution to these issues of acute concern. The labor committee, made up of state officials, growers, agricultural associations such as the farm bureau, community groups, elected officials and federal representatives, expects to have specific recommendations concerning H-2A within two to three months. Meanwhile, there are several possible recommendations for your consideration.

- Ensure adequate funding for the wage determinations under H-2A so that crop specific and area specific wages can be determined. A single rate for Oregon makes very little sense. The rates for pears, strawberries and cherries are going to be very different.

  Also, consideration should be given to combining the wage determination efforts of the U.S. Department of Agriculture and the State Employment Service prevailing wage surveys.

- Support funding for Oregon this year to survey the workers to determine their status (domestic, SAW, undocumented alien), home base and future plans (to become documented, to leave agriculture, to return to a foreign country, etc). This information is needed to better forecast worker requirements for 1989 and beyond.

- Accelerate and expand the RAW program so that adequate numbers of workers can become documented.

- Allocate FmHA 514/516 funds for migrant housing to the states. This would eliminate delays in processing the requests for funds and ensure that Oregon received a share of the monies allocated. Also, available dollars should be expanded for 514/516 programs. The $10 million appropriated nationally is not enough to address Oregon's needs, let alone the entire country.

- Encourage Oregon's participation on the National Agricultural Commission, or alternatively, provide funding to the state from that commission to assure that the unique problems of the Oregon industry are properly and adequately assessed and protected in future actions.

- Encourage stronger participation between Federal agencies and state government in developing program requirements that are workable for Oregon. This includes the RAW program, H-2A, and legalization.

Submitted by:

Mike Kalel
Deputy Labor Commissioner

Chair, Labor Subcommittee
Governor's Coordinating Committee on IRCA

STATEMENT OF THE OREGON DEPARTMENT OF AGRICULTURE TO THE SUBCOMMITTEE ON REGULATION AND BUSY OPPORTUNITY OF THE SMALL BUSINESS COMMITTEE – U.S. HOUSE OF REPRESENTATIVES REGARDING THE IMPACT OF THE IMMIGRATION H2-A PROGRAM

Presented by: Bruce Andrews, Deputy Director
Oregon Department of Agriculture
March 21, 1988

Good morning! I am Bruce Andrews, Deputy Director, Oregon Department of Agriculture. In that capacity, I am continually in contact with members of the agricultural industry throughout the state. It is my responsibility to make all possible efforts to ensure that the agricultural producer in Oregon is able to produce, harvest and market the commodity. I would like to thank you for this opportunity to discuss the current issues that agriculture is facing with regard to its worker supply. I am confident the interest of you and your committee will bring about some much needed changes in the ability to supply workers to the northwest, particularly Oregon.

From the inception of the Immigration Reform and Control Act of 1986 (IRCA), agriculture has felt the impact of that legislation. As you will remember, IRCA went into effect just as the harvest season in the northwest began in 1987. It took the efforts of producers, farm organizations, state government, as well as the cooperation of federal authorities to aid in streamlining the paperwork for the admission of workers into this country, informing employers and employes of the law, regulations and their impact, and generally responding to difficulties encountered throughout the season. We were able to make it through the harvest, but I feel only due to the extreme efforts of the above-mentioned parties, as well as that of the public.

This year new issues confront us. IRCA made special provisions in the law for Seasonal Agricultural Workers (SAWS) to accommodate the interest of agriculture.

This accommodation was made, as was stressed by members of the Congress, because the western portion of the United States differed substantially from other portions of the country in its need for seasonal agricultural workers. Oregon, as well as other states, has changed from a predominantly domestic agricultural work force to one which derives primarily from foreign workers, specifically Mexico. In discussions with growers, we have learned that a high percentage of the workers who labored in Oregon during the 1987 season were undocumented and not eligible for either amnesty or the SAWS program. This fact was recently documented by the preliminary results of a survey commissioned by the Oregon Strawberry Commission and the Governor's Coordinating Commission on IRCA, which indicated that approximately 43 percent or 17,900 of the workers in the strawberry harvest last year were undocumented persons. It is unknown whether there will be increased numbers of documented workers in the fields this year. In addition, it is a well recognized fact that many of those persons who are able to qualify for legalization will not continue to remain in agricultural work and will, like so many domestic workers, opt for other employment.

At the inception of IRCA, the INS projected that between three and four million persons would qualify for amnesty or the SAWS program nationally. Subsequently, that figure has been revised to approximately two million. In information obtained from the Portland District office of the INS, the nationwide totals as of March 15, 1988, were 1,056,465 amnesty applications and 320,351 SAWS. On a state level, initial INS projections were that Oregon would receive applications of approximately 100,000 persons. Other organizations estimated a more modest figure of 24,000. Applications are running substantially behind schedule and projections. Total applications in Oregon as of March 8 were approximately 12,000 with a distribution of 3,000 to amnesty and 9,000 to SAWS.

By examining the above stated figures, it reveals that the potential pool of

Agricultural workers available through the SAWS program has been extremely limited, particularly in Oregon. As a result, the agricultural work force is severely in jeopardy. It appears that the number of potential SAW candidates is far more limited than previously thought. Due to the possibility of fraud or failure to meet various qualification criteria on other grounds, a large percentage of the SAW applicants will not qualify for legalization. This factor will have a significant impact upon the number of SAW workers. On a given day at the height of the harvest season several thousand workers may be needed. The aforementioned strawberry harvest survey indicated that based upon acreage planted and harvest needs, a projection of approximately 38,000 persons would be needed for the harvest of that commodity alone.

We have, together with individuals and other farm organizations, spent considerable time examining the H2-A program. Although it is designed to be a measure of last resort, the current status of agricultural employment makes it more likely that H2-A will be considered as an alternative than was previously contemplated by Congress.

One of the key components of H2-A is that of the Adverse Effect Wage Rate (AEWR). This is the rate which must be paid to workers who participate in the H2-A program. This rate is determined by periodic agricultural surveys of all commodities throughout the year. This rate is applicable to a wide range of commodities. The H2-A program, administered by the Department of Labor, utilizes this survey rate. The AEWR is soon, if not already, to be changed from $4.52 to $5.26 per hour. This rate, we feel, does not accurately reflect the true wage rate or factor in additional cost of food and lodging.

The program has a minimum 60 day requirement that must be met. Applications must be submitted to the Department of Labor no less than 60 days prior to need

IN ORDER TO TAKE PART IN THE PROGRAM. AS YOU CAN APPRECIATE, FROM A REVIEW OF THE 1986 TO 1987 OREGON AGRICULTURE AND FISHERIES STATISTICS, THERE IS IMMENSE DIVERSITY IN AGRICULTURAL CROPS IN THIS STATE. THE BEGINNING, ENDING AND LENGTH OF CROP SEASONS ARE HIGHLY DETERMINED BY THE NATURE OF WEATHER CONDITIONS THROUGHOUT THE YEAR. ALTHOUGH THE OREGON CROPS HAVE THIS FACTOR IN COMMON WITH CROPS ACROSS THE UNITED STATES, IT IS IMPORTANT TO NOTE THAT UNLIKE CERTAIN OTHER STATES, THE DIVERSITY OF THE CROPS MAKES IT PARTICULARLY DIFFICULT TO PREDICT WHEN THOSE CROPS WILL BE READY FOR HARVEST, AS THERE IS A GREAT DEAL OF OVERLAP. THE PROBLEMS PRESENTED BY H2-A ARE THAT A GROWER HAS A DIFFICULT TIME IN DETERMINING WHAT DATE HE WILL NEED THE LABOR. IF THE WORKERS ARRIVE SEVERAL WEEKS TOO EARLY OR TOO LATE, THE FARMER IS BOUND TO PAY FOR THOSE WORKERS AND STILL WILL NOT HAVE AN ADEQUATE WORK SUPPLY TO MEET THE NEEDS.

THERE ARE ADDITIONAL DIFFICULTIES THE GROWER MAY ENCOUNTER IF HE DOES BRING H2-A WORKERS TO THIS COUNTRY. IF DOMESTIC WORKERS SHOULD COME TO THE JOB SITE READY TO WORK, THOSE DOMESTIC WORKERS MUST THEN BE GIVEN THE JOB. THIS MEANS THAT A GROWER WHO HAS SPENT FUNDS IN RECRUITMENT, TRANSPORTATION AND HOUSING OF A GROUP OF WORKERS MUST ABSORB THOSE COSTS AND, IN ADDITION, BE UNABLE TO USE THOSE WORKERS. THERE ARE UNANSWERED QUESTIONS ABOUT THE PRODUCER'S OBLIGATIONS TO THE H-2A WORKERS AT THAT TIME AS WELL AS THE BASIC INTEGRITY OF THE PROGRAM.

THE MEMBERS OF THE AGRICULTURAL COMMUNITY UNDERSTAND THE DIFFICULTIES WHICH WENT INTO THE IMPLEMENTATION OF THIS LAW; HOWEVER, THEY ALSO WISH FOR LEGISLATURES AND OTHER INTERESTED PERSONS TO UNDERSTAND THE PROBLEMS WHICH HAVE BEEN PRESENTED BY A LAW WHICH OFTEN SEEMS MORE GEARED TOWARD EMPLOYMENT ISSUES THAN THAT OF IMMIGRATION. ON BEHALF OF THE DEPARTMENT OF AGRICULTURE, I MAKE THE FOLLOWING RECOMMENDATIONS FOR THE ADMINISTRATION OF THE IMMIGRATION REFORM AND CONTROL ACT:

1. The wage determination for H2-A should be restructured. The wage survey is currently done on a three to four time per year basis at such intervals that may miss the high season employment in labor intensive crops, thereby distorting an accurate picture of wages. It is recommended that such surveys be on a monthly basis from which the averages can be gained. In addition, the survey should be commodity specific or on a regional basis.

2. The structure of H2-A should be modified in the areas of the provision of all housing and food, which are in addition to the guaranteed wage. A minimal contribution, strictly stated, should be required for the provision of these amenities. This requirement would ease the extreme financial burden on farmers.

3. In order to produce a potentially greater SAW population, there should be an extension of the current qualification period (May 1985 through May 1986) through the end of 1987. An extension of this qualification period may produce a greater number of applicants to meet initial SAW projections. Greater emphasis should be given by the INS toward reaching the SAW populations. While IRCA addresses the continuing need for agricultural workers through the RAW program, its 1991 implementation will not address present needs. Expansion of the SAW application period will.

4. In accordance with number 3 above, the initiation of penalties for agricultural employers should be moved back one year to November 1989.

5. The Agriculture Commission, provided for in the Act, should be immediately activated. Special care should be taken to ensure that northwest interests are represented. This group should begin to perform the important process

OF DATA COLLECTION, ANALYSIS AND PROJECTION OF LABOR TRENDS AND GIVE DIRECTION TO AGRICULTURAL LABOR POLICIES. THE COMMISSION SHOULD EMPLOY ALL MEANS AT ITS DISPOSAL TO ENSURE THAT AGRICULTURAL ISSUES IN THIS COUNTRY ARE SPARED GREATER DIFFICULTY.

6. THE AGRICULTURAL COMMISSION SHOULD IMMEDIATELY ESTABLISH A STUDY ON THE LONG-TERM EFFECTS OF LABOR AVAILABILITY TO AMERICAN AGRICULTURE AND ITS RELATED PROCESSING INDUSTRIES. SUCH A STUDY COULD ESTABLISH COMPETITIVE TRENDS AND BE USED TO FOCUS RESEARCH IN NEEDED AREAS.

7. THERE SHOULD BE A REDUCTION IN THE 60 DAY REQUIREMENT FOR SUBMISSION OF H2-A REQUESTS TO THE DEPARTMENT OF LABOR. AS WAS DISCUSSED ABOVE, IT IS DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE PRECISE DAY THAT LABORERS ARE NEEDED. A REDUCTION IN THIS TIME FRAME MIGHT ALLEVIATE SOME OF THE PROBLEMS IN PROJECTING LABOR NEEDS.

IN SUMMARY, THE EMPLOYERS WHO ARE BEARING THE BRUNT OF THIS LAW IN THE NORTHWEST ARE AGRICULTURALISTS, PRIMARILY SMALL EMPLOYERS, WHO CONTINUE TO BE FRUSTRATED IN THEIR ABILITY TO PLAN FOR CROPS AND LABOR NEEDS.

IT IS THE VIEW OF THE DEPARTMENT THAT THE ABOVE ISSUES CAN AND SHOULD BE ADDRESSED, AND THERE ARE SOLUTIONS WHICH, IF CAREFULLY PURSUED BY BOTH THE FEDERAL GOVERNMENT AS WELL AS CONCERNED MEMBERS OF THE PUBLIC, PROVIDE FOR THE CONTINUED VIABILITY OF AGRICULTURE IN THE STATE OF OREGON.

THANK YOU AGAIN FOR YOUR INVITATION TO PRESENT TESTIMONY. WE WILL BE GLAD TO PROVIDE ANY ADDITIONAL INFORMATION WHICH YOU MAY NEED CONCERNING AGRICULTURE AND AGRICULTURE PRACTICES IN OREGON.

KCR13-.5X

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DISTRICT 31

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HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

March 17, 1988

TESTIMONY
CONGRESSMAN WYDEN'S HEARING OF MARCH 21, 1988

Dear Congressman Wyden:

As an Oregon State Representative representing parts of Marion and Polk Counties and as an Assistant Professor (Adjunct) of Immigration Law at the University of Oregon Law School, I would like to comment on theImmigration and Reform Act of 1986.

Agriculture is one of the mainstay industries in the State of Oregon producing billions of dollars for our economy. Many of the crops are labor intensive and labor shortages are a concern. For example, the strawberry industry is projected to have labor shortages in the near future. The impact not only falls on the farms, but also to packing plants and transportation carriers.

I believe that IRCA has had a negative impact on Oregon and its agriculture. The concerns have included:

1. Confusion about the naturalization process. People do not know how to become legalized and do not apply for legalization.

2. Home base migrant states like California and Texas have dissuaded people from migrating to the Northwest hereby reducing the labor supply.

3. Alternative programs to bring in workers from other states has not been productive.

The cumulative effect of these factors shows that IRCA will exacerbate the agricultural work shortage in the next few years.

The H-2A program which was intended to allow growers to bring in guest foreign workers is doomed to fail under its current procedure. Growers will have a difficult time to absorb the costs associated with the program e.g. U.S. Department of Labor fees; recruitment costs; wage guarantees;

meals; housing; workers' compensation; transportation; and more.

Having served on the House Housing Committee, I know that there is insufficient migrant worker housing in Oregon. Funding for such housing is minimal. The standards for the housing is unclear.

I would suggest the following:

1. Oregon should be made part of the National Agricultural Commission to ensure that the unique problems of our State are addressed.
2. Stronger coordination between the federal and Oregon state agencies. The federal government, for example could fund the Employment Division to do employment authorization and recordkeeping under IRCA, rather than private employers.
3. Oregon's agricultural economic base must be safeguarded especially in light of our foreign trade.

Thank you for the opportunity to comment.

Rocky Barilla

NWFPA
NORTHWEST FOOD PROCESSORS ASSOCIATION

STATEMENT OF NORTHWEST FOOD PROCESSORS ASSOCIATION BEFORE THE SUBCOMMITTEE ON REGULATION AND BUSINESS OPPORTUNITIES

March 21, 1988

STATEMENT OF INTEREST

The Northwest Food Processors Association is a regional trade association representing 71 companies in Oregon, Washington and Idaho. Association members process fruits, vegetables and potatoes. The Association's 48 Oregon members operate 63 plants statewide and employ 21,300 people on a full-time and seasonal basis. In 1987, Oregon processors produced over 100 million pounds of frozen strawberry products. Payments to Oregon strawberry growers for their 1987 crop exceeded $33 million.

BACKGROUND

The Immigration Reform and Control Act of 1986 (IRCA) made major changes in U.S. immigration policy. The Act shifted the burden of enforcement away from the Immigration and Naturalization Service and on to U.S. employers. The IRCA law anticipated a disproportionate affect on agriculture. Consequently, provisions were made for legalizing special agricultural workers (SAWs) and for bringing in replacement agricultural workers as those SAWs who left the field of agriculture. However, the impact of IRCA on Northwest hand-harvested crops was not adequately anticipated in the haste of passing the new law.

It is now apparent that estimates of the number of SAW workers, which would be available to Northwest agriculture, have been vastly overstated. SAW applications are currently less than 10 percent of the total estimated by the INS.

Consequently, perishable agriculture employers in the Northwest have increasingly begun to look at the H2-A program as a possible source of workers to fill the gap for hand-harvested crops.

DOCUMENTING THE WORKER SHORTAGE

During the 1987 harvest season, extensive efforts were made to recruit adequate workers to pick the strawberry crop. While the worker shortage was very severe, some groups claimed that the cause was an early season and the extremely large size of the crop. There has been, in the past, widespread disagreement as to whether a true labor shortage really existed. The need for better statistical data was clearly evident. To satisfy that need, the Labor Subcommittee of the Oregon Governor's Task Force on Immigration Reform, on which I serve, asked Dr. Robert Mason, Oregon State University, to conduct a survey of strawberry growers. His task was to project the number of pickers required to harvest the 1988 Oregon strawberry crop and to analyze the makeup of that labor force.

Dr. Mason's research revealed that the 1988 crop will require nearly 38,000 pickers. He also found that 42.7 percent or 16,000 pickers will need to be undocumented aliens if past years' data holds constant.

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This survey substantiates the claims of industry that a serious shortage of pickers is imminent. It becomes very apparent that when the requirements of IRCA are superimposed on an economy that is as dependent on undocumented labor as strawberry harvesting, that a tremendous problem does indeed exist.

It is also becoming very clear that the majority of undocumented workers, who have previously worked in the Oregon economy, are not eligible or are not interested in requesting SAW status. Consequently, the vast majority of the 16,000 undocumented workers identified in Dr. Mason's study will not be available to harvest future crops. This fact spells certain economic disaster for the strawberry industry in Oregon.

H2-A WILL NOT PROVIDE THE NEEDED WORKERS

The potential for a catastrophic shortage of workers in the strawberry harvest has been documented. Now the question becomes, can this shortage be overcome by utilization of the H2-A Program? The Northwest Food Processors Association does not believe that H2-A, in its present form, is economically feasible or workable for Oregon strawberry growers. The following points outline just a few of the significant hurdles which H2-A presents to Oregon strawberry growers.

1. ADVERSE WAGE RATE

The H2-A regulations require employers to pay the Federal Adverse Effect Wage Rate for the jurisdiction in question. For Oregon, the 1988 Adverse Effect Wage Rate has been set at $5.26 per hour. This wage rate is set by taking an average of the wages of all agricultural workers in the State of Oregon. Because the wage rate is based on a broad sample of all agricultural workers, not just hand-harvested crops or strawberry pickers, the Adverse Effect Wage Rate is grossly overstated for this segment of the industry. According to the U.S. Department of Labor, in their regulations published Monday, June 1, 1987, in 20 CFR 654, the purpose of an Adverse Effect Wage Rate is to ensure that the wages of similarly employed U.S. workers will not be adversely affected by the importation of alien workers. In other words, the Adverse Effect Wage Rate exists to prevent employers from paying alien workers less than the going market rate and consequently deflating wage rates for an entire industry.

The effect of the Adverse Wage Rate on the strawberry industry will be exactly the opposite. Since the AEWR is set at an artificially high rate, it will, in fact, cause an inflation in the wage rate for strawberry pickers. In addition, the grower is also required to pay all domestic help the same Adverse Effect Wage Rate that is required for alien workers. Consequently, the grower utilizing an H2-A Program would be forced to pay all of his employees a wage rate much higher than the industry average.

This was not the intent of the Adverse Effect Wage Rate and it is an issue that must be corrected.

2. THE FIFTY PERCENT RULE

H2-A regulations not only require the payment of an artificially high wage, but they also require that an employer hire any qualified, eligible U.S. worker who applies for a job which is currently held by an alien working under an H2-A Program. This provision is in force until 50 percent of the work under contract has been completed. It also requires that the employer shall offer to provide any eligible qualified U.S. worker housing, benefits, wages and working conditions equivalent to those offered to the H2-A worker.

Let me use a hypothetical example to show what problems this requirement will cause. Farmer A, in Washington County, makes an application to use the H2-A Program and is approved for 200 workers. He is required to pay the Adverse Effect Wage Rate to his entire crew, including domestic workers. On the first day of harvest, the grower receives 175 applications for employment from domestic pickers who are currently employed by Farmer B. Farmer B does not have an H2-A Program and is "only" paying the competitive wage rate.

Farmer A is now required to terminate 175 of his H2-A employees, and is required to hire the 175 qualified and eligible U.S. workers who are seeking to work for a higher, guaranteed wage. Farmer B is now short 175 workers. The H2-A Program for Farmer A has caused a net displacement of 175 workers and caused Farmer A to artificially increase his wage payments to the computed Adverse Effect Wage Rate. It has also caused the displaced alien workers to be put in "suspended animation" with no job and no ability to look for other work legally.

This scenario is not unrealistic. In fact, this is exactly what would happen under current rules. There is no net benefit to the system under H2-A as it is currently written.

3. U.S. WORKER RECRUITMENT REQUIREMENTS

Employers who wish to use the H2-A Program must engage in positive recruitment of U.S. workers to be eligible. This requirement means the employer must agree to the filing of a job order through the Interstate Clearance System.

Recent experience with the Interstate Clearance System shows that it is incapable of adequately selecting and recruiting qualified workers from the state of origin. Last year, strawberry pickers recruited to Oregon through this system proved to be totally unacceptable. The system does not allow for close screening and scrutiny of a potential employees work history or qualification. We have also been told that some states are now considering requiring transportation money to be paid up-front for Interstate Clearance applicants. Growers would have absolutely no control under a system such as this and would not be able to take such risks. The Interstate Clearance System is a major hurdle in the H2-A process.

The Northwest Food Processors Association does not feel that the H2-A Program is a viable alternative for strawberry growers in the Northwest. The nature of the crop and the complexity of the regulations cause this program to be unworkable. H2-A would require major modification before it would be usable to Oregon strawberry growers.

WHAT HAPPENS IF NOTHING IS DONE?

Strawberry growers in Oregon are seriously concerned about a potential labor shortage in 1988. We are even more concerned about the 1989 crop season. We strongly feel that there must be some hope for resolution of the labor issue by mid-1988 or strawberry growers will begin to bail out of the industry en masse.

The 1988 season is going to be a tough one for strawberry growers. Supplies of frozen strawberries are at a very high level. The price to the grower for the 1988 crop is expected to be low, somewhere around 25 cents per pound.

Strawberry growers can expect to have an occasional down year. However, they will be unable to withstand the pressures if they cannot be assured of a steady labor supply.

If we do nothing to help the industry secure a steady dependable labor supply, we will lose the Northwest strawberry industry. This would mean the loss of many thousands of jobs and an economic contribution of well over $50 million to Oregon's economy.

We urge this committee to begin work immediately on preparing a strategy for providing an adequate labor supply for Oregon strawberry growers. This effort will require the cooperation of industry, labor, and government to succeed. The Northwest Food Processors Association is willing and ready to be a part of this effort.

CONCLUSION

The impending shortage of labor is a serious, deadly threat to Oregon berry farmers. H2-A is not a viable solution as it is currently structured.

The issue here is not whether wage rates are too high or whether the 50 percent rule is equitable. The real issue is the survival of a critical part of Oregon's agricultural economy.

In the next year a decision will be made. That decision can take only one of two possible directions:

1. Make it possible, economically and procedurally, to bring an adequate supply of labor to our state; or
2. Do nothing and export the entire Oregon strawberry industry to a foreign country where ample labor supplies currently reside.

The choice is clear. Let's work together to save Oregon's strawberry industry.

Craig Smith
Manager, Technical Programs

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the voice of organized agriculture

March 17, 1988

Testimony by Oregon Farm Bureau
The Subcommittee on Regulation and Business Opportunities
March 21, 1988
Portland City Council Chambers

Testimony Prepared by

Doug Krahmer, Chair
Labor Advisory Committee

Bonnie L. Hahn, Manager
Labor Relations Department

Currently, only three ways exist to admit and adjust foreign agricultural workers into the United States to harvest perishable crops:

1. The SAW Program (Special Agricultural Worker),

2. The H-2A Program (Temporary Guest Worker),

3. The RAW Program (Replacement Agricultural Worker).

The SAW program legalizes already existing agricultural workers, but SAW workers are not required to continue to work in agriculture and may choose not to work in the Northwest agriculture.

During 1988 and 1989 and before the beginning of the RAW program (1990-1993), the H-2A program is the only way to legally admit aliens to work in U.S. agriculture on a temporary basis. This H-2A program does not meet the needs of perishable crop producers in numerous ways, three of which are:

1. Clearance and recruitment of domestic workers before H-2A application is approved,

2. The current Adverse Effect Wage Rate (AEWR),

3. Housing requirements as defined in the H-2A regulations.

The purpose of the H-2A program is to provide employers with an adequate labor force while protecting jobs of U.S. workers by not depressing existing work standards. The current H-2A program will inflate work standards and will not insure adequate workers (particularly as SAW workers leave agriculture) for Northwest perishable agriculture.

Section one of this testimony cites three existing problems with possible solutions for the H-2A program.

Section two presents alternative ways to provide temporary agriculture workers for Northwest perishable agriculture.

SECTION I Problems and Possible Solutions Regarding the H-2A Program.

PROBLEM 1 Clearance and recruitment of domestic workers before H-2A application is approved.

SOLUTION 1 Recruitment on the part of the growers is to be limited to local area newspapers, contact with local and state employment offices and contact with employment services in labor surplus areas. (See Attachment No. 1 of accepted recruitment program for H-2A program in Virginia.) Out of state recruitment to be handled by the Employment Division or other agency.

PROBLEM 2 The current Adverse Effect Wage Rate (AEWR).

SOLUTION 2a Agricultural employers need to provide minimum wage as required in other industries when aliens with work authorization are allowed to work. (H-2B program or work authorization for students and individuals on special I-94 Visa's.)

SOLUTION 2b Re-figure the Adverse Effect Wage Rate (AEWR) by dropping states or adding adjoining states. (For example: $3.95 Idaho and $5.26 Oregon.) Re-figure the AEWR with a basis for perishable crop agriculture only.

SOLUTION 2c Provide an AEWR for each commodity group or crop.

PROBLEM 3 Housing requirements as defined in the H-2A regulations.

SOLUTION 3 Since most Oregon agriculture producers do not have housing at this time (see Strawberry Study—about 80% no housing—Attachment No. 2) or housing conditions do not meet federal standards;

a. Allow the prevailing local practice of housing to meet H-2A rules. (There are provisions in H-2A regulations to use federal, state, and local standards and practices.)

b. Allow workers to live in community housing or develop a housing program with a voucher system in conjunction with the Housing Administration or housing management associations.

SECTION II Alternative Ways to Provide Temporary Agriculture Workers for Northwest Perishable Crop Agriculture.

To complete section two, Oregon Farm Bureau is submitting a solution list put together by Bonnie L. Hahn in May of 1987 to avert the shortage in 1987. Points 5, 6, 7, 9, 10, and 11 are repeated here. (Attachment No. 3) Dates need to be changed to 1988.

5. Allow a one season program (1987 harvest) to operate much like the suggested RAW (replacement worker program).
6. Allow a one season nonrestrictive H-2A program to operate (drop adverse wage restriction and 60 day application period) for the 1987 harvest.
7. Allow SAW's applicants to complete paperwork in states and districts other than where they began the application process. Have QDE's (qualified designated entities) give temporary work permits.
9. Have western states' Governors' support a special harvest program suggested by the Department of AGriculture which would lift all restrictions during the 1987 harvest.
10. Provide incentives for new residents and refugees to take part in the 1987 harvest by allowing medical benefits to continue while engaged in perishable crop harvesting. A group of 300-400 southeast Asian workers are available under these conditions.
11. Immediately promote a special high school work program through industry councils to meet the shortage need for the 1987 harvest.

In addition to the previously given suggestion, Oregon Farm Bureau supports a work program much like that allowed for F1 Visa students after the students finish their studies. The students are allowed to work on a 3 month or 6 month temporary training basis before they return home. A similar I-94 Visa (possibly H-2B is available for other industries.

Another solution would be to issue a temporary guest worker program (much like the RAW program) needs to be initiated until a feasible RAW program or system of supplying guest workers is developed. Agricultural groups would be pleased to help develop such a program.

Respectfully Submitted,

Doug Krahmer, Chair
Labor Advisory Committee

Bonnie L. Hahn, Manager
Labor Relation Department

BH/baf

Attachments

ATTACHMENT NO. 1

RECRUITMENT PLAN 1987

Regulations require recruitment be done "to an extent no less than that of non-H-2A agricultural employers of comparable or smaller size, in the area of employment."

Based upon information received from Virginia Employment Commission staff and area non-H-2A agricultural employers, the general recruitment policies are:

Either contact last year's workers and/or crewleaders or are contacted by those workers and/or crewleaders.

Those growers who use crewleaders work with the same people from year to year.

Some growers place an ad in the local newspapers.

Based on this information, we are submitting the following plan.

1. Last year's workers and/or crewleaders are being/will be contacted.
2. Employment Service offices in labor surplus areas, as designated by DOL, are being/will be contacted.
3. Large ads will be placed in two area newspapers.
4. Regular contact will be kept with local and state employment offices.
5. Our Association has Qualified Designated Entity status. We will use that status to recruit new eligible workers.
6. Contact will be made with other Q. D. E. offices in an effort to reach those eligible workers.
7. New sources of labor will be explored as information is received.

JUL 2 3 1987

Executive Secretary
Frederick County Fruit
Growers Asociation, Inc.
801 Fairmont Avenue
Post Office Box 2735
Winchester, Virginia 22601

****
* Occupation: Harvest worker, *
* Fruit *
* Number of Job Openings: 358 *
* Employment Dates: 9/8/87 *
* to 11/1/87 *
* Certification Date: 8/19/87 *
****

This is to notify you that the captioned temporary alien agricultural labor certification application has been accepted for consideration.

Your application is timely and contain the conditions of employment that will not adversely affect U.S. workers similarly employed. Furthermore, I have reviewed your positive recruitment plan and find that it is acceptable. Recruitment of local workers by the State Agency began on July 2, 1987.

In order to receive a temporary alien agricultural labor certification determination by August 19, 1987, you are required to:

1. Carry out your positive recruitment plan. In addition, you must contact all of the following U.S. worker organizations and discuss your job order with the contact person named below. You must also offer to personally visit these organizations to interview U.S. workers who may be available to fill your job opportunities.

In reporting back to me, you will be expected to indicate the name of the person in each organization with whom you discussed your job order, the date of the discussion, and the results of your contact and offer of a personal visit.

Friends of Farmworkers, Inc.
3156 Kensington Avenue (7th Floor)
Philadelphia, PA 19134
Contact:
215-427-4885

HCAD (Haitian-American Community Association of Dade)
5901 N.W. 2nd Avenue
Miami, FL 33127
Contact: Francois Dormevil, Employment Placing Outfit
305-751-3429

People's Enterprise Project
64 E. Main Street
Apopka, FL 32703
Contact: Tino Moreno
305-886-5151

Telamon Corporation
3018 West Clay Street
Richmond, VA 23220
Contact: Kevin Boyd, State Director
804-358-9109

Commonwealth of Puerto Rico
Migration Division
Department of Labor and Human Resources
304 Park Avenue South
New York, NY 10010
Contact: Nydia M. Velazquez, National Director
212-260-3000

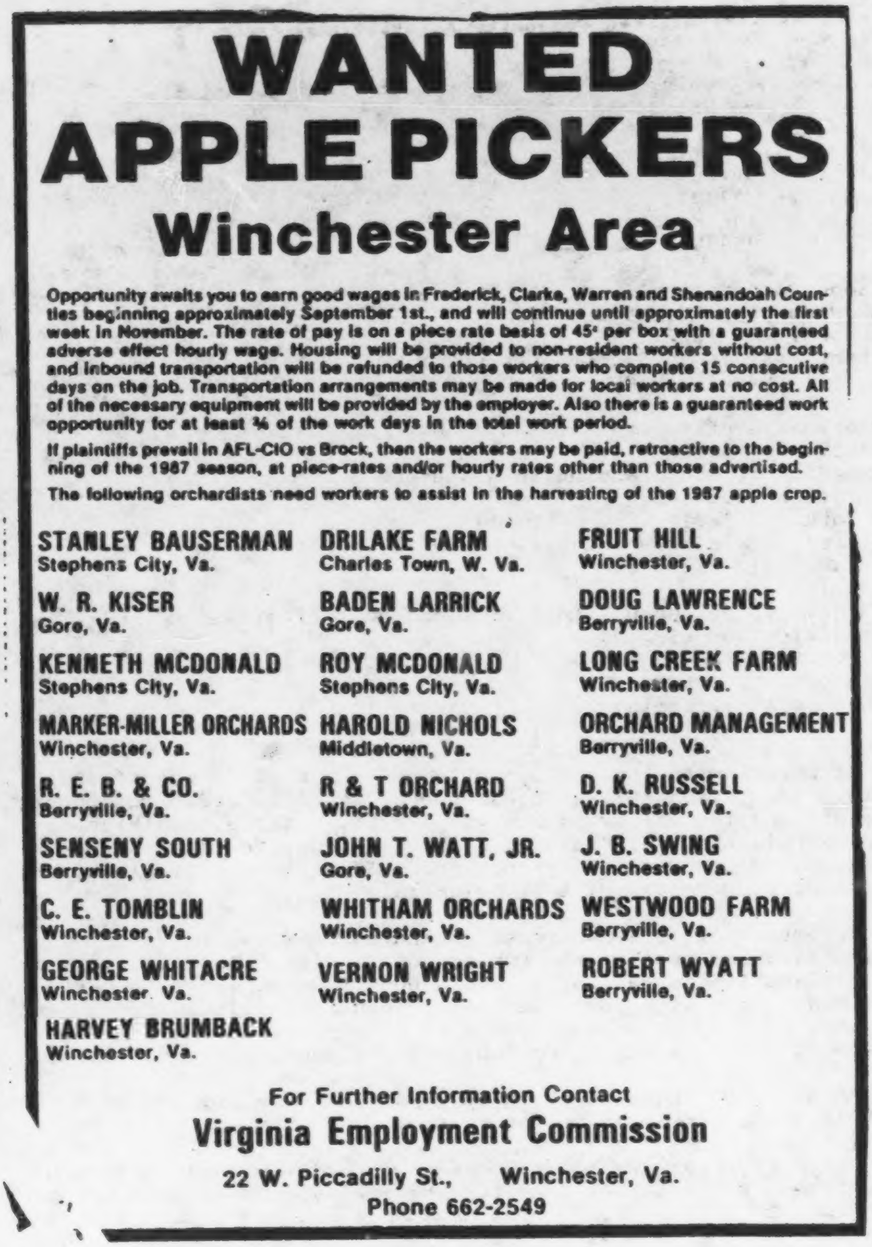
CATA (Comite De Apoyo A Los Trabajadores Agricolas)
Post Office Box 458
30 High Street
Glassboro, NJ 08028
Contact: Angel Dominguez
609-881-2507

2. Cooperate with the employment service system in recruiting workers identified through clearance of your job order throughout Virginia and the following States: Texas, Florida, Louisiana, Mississippi, Alabama, Georgia, South Carolina, North Carolina, Kentucky, Puerto Rico, Maryland, Pennsylvania, West Virginia, Delaware, and the District of Columbia.

3. Interview all U.S. workers, including crewleaders if applicable, referred by the Employment Service. Any U.S. worker who has applied to you (or on whose behalf an application has been made), but whom you rejected for other than lawful job-related reasons or whom you have not provided with a lawful job-related reason for rejection, will be counted as available.

4. Document all referrals, interviews, and results, and if a worker is not hired, state the reason.

5. Place at least two advertisements in a daily local newspaper and place a radio advertisement. The newspaper ad should be not ss than 2" X 2" in size. The newspaper and radio advertisements include the following information:



WANTED APPLE PICKERS

Winchester Area

Opportunity awaits you to earn good wages in Frederick, Clarke, Warren and Shenandoah Counties beginning approximately September 1st., and will continue until approximately the first week in November. The rate of pay is on a piece rate basis of 45¢ per box with a guaranteed adverse effect hourly wage. Housing will be provided to non-resident workers without cost, and inbound transportation will be refunded to those workers who complete 15 consecutive days on the job. Transportation arrangements may be made for local workers at no cost. All of the necessary equipment will be provided by the employer. Also there is a guaranteed work opportunity for at least ¾ of the work days in the total work period.

If plaintiffs prevail in AFL-CIO vs Brock, then the workers may be paid, retroactive to the beginning of the 1987 season, at piece-rates and/or hourly rates other than those advertised.

The following orchardists need workers to assist in the harvesting of the 1987 apple crop.

STANLEY BAUSERMAN
Stephens City, Va.

DRILAKE FARM
Charles Town, W. Va.

FRUIT HILL
Winchester, Va.

W. R. KISER
Gore, Va.

BADEN LARRICK
Gore, Va.

DOUG LAWRENCE
Berryville, Va.

KENNETH MCDONALD
Stephens City, Va.

ROY MCDONALD
Stephens City, Va.

LONG CREEK FARM
Winchester, Va.

MARKER-MILLER ORCHARDS
Winchester, Va.

HAROLD NICHOLS
Middletown, Va.

ORCHARD MANAGEMENT
Berryville, Va.

R. E. B. & CO.
Berryville, Va.

R & T ORCHARD
Winchester, Va.

D. K. RUSSELL
Winchester, Va.

SENSENY SOUTH
Berryville, Va.

JOHN T. WATT, JR.
Gore, Va.

J. B. SWING
Winchester, Va.

C. E. TOMBLIN
Winchester, Va.

WHITHAM ORCHARDS
Winchester, Va.

WESTWOOD FARM
Berryville, Va.

GEORGE WHITACRE
Winchester, Va.

VERNON WRIGHT
Winchester, Va.

ROBERT WYATT
Berryville, Va.

HARVEY BRUMBACK
Winchester, Va.

For Further Information Contact

Virginia Employment Commission

22 W. Piccadilly St., Winchester, Va.
Phone 662-2549

Va. Daily 8/20/87

277275230002 08/18/87 ICS IPMMTZZ CSP NVFB
1 7036671396 MGM TDMT WINCHESTER VA 08-18 0319P EST

FREDERICK COUNTY FRUIT GROWERS ASSOCIATION,C
BURKE
801 FAIRMONT AVE
WINCHESTER VA 22601

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7036671396 MGMB TDMT WINCHESTER VA 252 08-18 0319P EST
ZIP
CATA

GLASBORO NJ 08028
DEAR MR DOMINGUEZ

I AM CONTACTING YOU ON BEHALF OF OUR MEMBER GROWERS BECAUSE WE HAVE BEEN INFORMED BY OUR REGIONAL ADMINISTRATOR, WILLIAM HALTIGAN, U.S. DEPARTMENT OF LABOR, THAT YOU HAVE ACCESS TO WORKERS WHO "WOULD LIKELY BE WILLING TO MAKE THEMSELVES AVAILABLE FOR H-2A JOB OPPORTUNITIES FOR THE 1987 APPLE HARVEST" IN WINCHESTER VIRGINIA.

IT IS OUR INTENTION TO HIRE AS MANY ELLIGIBLE U.S. WORKERS AS POSSIBLE. THEREFORE, IF YOU ARE AWARE OF FOLKS WHO WILL BE IN A POSTION TO TAKE JOBS WITH OUR EMPLOYERS, WE ARE FIRST ASKING THAT YOU SEND THOSE PEOPLE TO THE NEAREST EMPLOYMENT SERVICE OFFICE TO REGISTER FOR REFERRAL. OUR JOB ORDERS HAVE BEEN CIRCULATED THROUGHOUT THE NATION. ALL THE TERMS AND CONDITIONS ARE CLEARLY STATED AND, AS YOU KNOW H-2A EMPLOYERS ARE COMMITTED TO HIRING ALL QUALIFIED REFERRALS. IF A WORKER WOULD RATHER CONTACT THIS OFFICE, I WILL BE GLAD TO EXPLAIN THE JOB.

IT SEEMS TO US THAT IF WE WERE TO SET UP RECRUITING VISITS, WE WOULD BE LIMITING INTERVIEWS TO ONLY THAT TIME WHEN WE ARE PRESENT. THAT IS A CLEAR DISADVANTAGE TO BOTH THE POTENTIAL WORKERS AND OUR GROWERS. IF YOU DO NOT AGREE WITH THIS METHOD, OR IF YOU HAVE QUESTONS, PLEASE FEEL FREE TO CALL US COLLECT AT 7036671396 AND WE CAN HOPEFULLY NSWER YOUR QUESTIONS OR SET UP A VIST.

RELY

, EXECUTIVE SECRETARY
COUNTY FRUIT GROWERS ASSOCIATION
ONT AVE
TER VA 22601

EST

FRESH OREGON BERRIES
TRAIL-BLAZER BERRIES
GROWER – DISTRIBUTOR – PROCESSOR
TOWNSEND FARMS, INC.

FARM
23303 N.E. Sandy Blvd.
Troutdale, Oregon 97060
503/666-1780
503/665-8210

NON IMMIGRANT ALIENS TO PERFORM TEMPORARY OR SEASONAL WORK IN AGRICULTURE UNDER THE H-2A PROGRAM

We as growers and processors in the fruit industry understand the need for changes in the immigration laws. We also understand that the H-2A program was instituted to allow those employers that could not get domestic help a viable alternative source for workers.

The H-2A program as it stands now may be a workable plan for most industries, but it is definitely a detriment and hardship for the agricultural industry and in particular the fruit industry in the Northwest area. The areas of the program that we take strong exceptions to are the following:

1. The required payment of $5.26 an hour is almost $2.00 more than the minimum wage required for domestic workers.
2. The administrative requirements in obtaining workers through this program is too cumbersome especially for small to medium sized growers.

In order to make the H-2A program a workable solution for the agricultural industry and especially the fruit industry, we feel the following changes are imperative:

1. The required wages for foreign workers should be the same as the minimum wage rates presently in effect for domestic workers.
2. Rules governing recruiting practices should be limited so the local areas for domestic labor prior to filing for foreign labor.

Our past experience with domestic labor indicates that the majority of the available work force doesn't want to work in the agricultural area especially the fruit industry at any wage rate. The seasonal nature in this industry also has a great impact of deterring the domestic workers.

On the other hand our past experience with foreign workers indicates that they are quite adept in the agricultural areas because the majority came from farming backgrounds. They are willing to work for the harvest season and return to their nations homeland. The majority of foreign workers in the agricultural area have no desire to remain permanently in the U.S.

In summary, unless these changes are made to the H-2A program we see the following effects on our industry:

A. A lack of available labor at a cost that allows growers and processors to compete and maintain present level of market share.

B..Increase of cost to consummers.

C. A reduction of economic activity in the agricultural area which would have a rippling effect throughout the food industry.

D. Creating a commercial environment that would open the doors to increased imports from countries whose labor rates are far below our domestic rates.

E. Create a business environment that would force most small or family concerns out of the marketplace entirely.

Michael E Townsend

Mike Townsend
Townsend Farms Inc.

STEINFELD'S PRODUCTS COMPANY

10001 N. RIVERGATE BLVD.
PORTLAND, OREGON 97203
TELEPHONE (503) 286-8241 • TWX 910-464-4718

Steinfeld's
WESTERN ACRES
Since 1922

Manufacturers of Finest Quality
pickles - relishes
sauerkraut

The Honorable Congressman Ron Wyden:

Subcommittee on Regualtion and Business Opportunities

Steinfeld's Products Company has been manfacturing food products in the Pacific Northwest since 1922. We are a family business in which I am the third generation. My grandparents founded the company in the St. Johns disctrict of Portland, Oregon. We currently market our products throughtout the western part of the United States, as well as selected foreign countries. There are currently six family members actively participating in the business.

In 1988 we have contracted approximately 44 million pounds of vegetalbes to be harvested within a 40 mile radius of our manfacturing plants in Portland and Scappoose. The vegetables consist of cucumbers, cabbage and cauliflower. Our primary competition in pickles in the Northwest is a Tacoma based company, Nalley's Fine Foods. They too harvest cucumbers in the state of Oregon.

In order to harvest the locally grown cucumbers, it requires approximately 9,000 laborers from July 20 thru the month of September. Last year, however, we started harvesting July 1 and continued through October 10.

I would like to explain what happens or could happen during an average year in Oregon for Steinfeld's. During the months of January and February, our management team determines the number of tons of raw product needed during the summer to supply our customers from August 1 to July 31 of the next year. In other words, we are forecasting sales 6 to 18 months out.

The amount of cucumbers required is discussed within the field department, which in turn contracts the tonnage needed with our growers. Our summer crop is 100% contracted at a fixed price. The field department works very closely with the farmers in preparing the land for harvest.

During the time between May 15 and July 1, growers plant the seeds in the ground. The plantings are dependent on several factors. The primary variable is the weather. On the average, our growers have to replant approximately one third of the acreage. Too much rain, too little water, too much sun, hailstorms, planted seeds to deep, planted seeds to shallow, too cold, too hot, freeze, etc. Oregon's Spring is unpredictable at best. We have had growers plant two parts of the field 20 days apart and still harvested the crop at the same time. Other variables include the use of chemicals, such as fertilizer, herbicides and pesticides.

Oregon's weather limits the grower to one crop of cucumbers. In contrast to our growing season, other areas of the country plant a Spring crop and a Fall crop. They are able to machine harvest their cucumbers, like we do our cabbage, and receive an acceptable return on their investment. This is not possible in Oregon. Our cucumber crop must be hand picked several times in order to generate enough revenue to pick the crop, cover overhead and produce some surplus dollars to support the farm.

Multipick harvesters have not been developed to adequately harvest the crop without damaging the vines. The farm machinery industry is not interested in working on such a machine. The demand is for the once over harvester which would be used throughout the rest of the United States.

Once the crop has been planted, our growers carefully maintain the field through good farming skills. Steinfeld's Products Company has the best growers available in the northwest for cucumbers. In addition to cucumbers, our growers plant other crops, inclcuding strawberries, caneberries, beans, corn, cauliflower, nuts, grains, onions, peas, zucchini, etc. Some are hand harvested while others are harvested mechanically. The grower has to plan when to plant each crop in order to harvest them in a timely manner with an adequate labor supply.

I am sure this is more than you ever wanted to hear about the harvesting of crops. However, it is the life blood of our growers and Steinfeld's Products Company.

The labor supply in the northwest is primarily from migrants - legal and otherwise. If adequate labor existed for our growers, it would be utilized. It makes no sense to me to transport laborers hundreds of miles, provide shelter and food if an existing labor force was readily available. Students, transients and drive-outs make up the rest of the labor force. Show me an area that has 30-40 people available to work day in and day out and I will show you ten cucumber growers with buses ready to transport them to the field.

How does H2A affect Steinfeld's Products Company and what needs to be done to modify the program to make it work. Craig Smith, of Northwest Food Processors Association, has submitted an excellent overview on the technical aspect of the program. I will not elaborate on it, except to thank him publically.

The following areas are a concern to Steinfeld's Products Company:

WAGE RATES:

Cucumbers are a piece ~~meal~~ work crop. There are between 50 and 350 harvesters in a field. Individual supervision of the laborers is very difficult. When a field worker fills a bucket, he gets paid. The more buckets he fills the more money he makes.

The variable weather conditions, such as too hot, too cold or too much rain affects the amount of cucumbers on any given day. There will be times when there are not enough cucumbers to pick to meet the minimum wage. The important thing is to pay the minimum wage per hour throughout the season. There will be exceptions. There will be days when the cucumbers are growing so fast you swear you can hear them stretch. There will be other days wwhen they will not be as plentiful. Unfortunately, nature is not controlled by the Department of Labor or any other governmental agency. On days when no work exists on the farm, the workers should have the right to be transported to other fields where additional labor is needed.

DOCUMENTING THE WORKER SHORTAGE:

This should be based on previous years experience. Again, no one wants to transport migrant labor from anywhere. The 60 day lead time is unrealistic. Unfortunately, no one can forecast furture weather conditions to comply with this law.

Last year was the earliest we harvested cucumbers in several years. The year before was one of the latest. Steinfeld's Products Company has an equally hard time with its part time labor force in the Summer. Our plant work force increases from approximately 160 to over 400 in the Summer. We would love to know when the crop is going to be ready in order to have an adequate labor supply. We too rely on past history and prepare the best we can for the summer.

THE 50% RULE AND U.S. WORKER RECRUITMENT REQUIREMENTS:

Field labor is one of the toughest physical jobs available. I think it is safe to say, if just about any other work was available to the majority of people, they would take it. I am not referring to 3 or 4 hours one day for extra school money. I am talking about all Summer long in all kinds of weather conditions, back breaking work.

Where does one recruit this type of labor force? Highly unlikely from the city. I have every reason to believe that our growers have searched the land looking for an adequate labor supply to no avail.

The 50% rule is unrealistic. If our growers comply with the law and domestic workers show up to replace them on a part time basis, who is going to pay the additional cost? Who is going to replace them when they leave? Our cucumbers do not stop growing because of a labor shortage. Adequate labor on a consistent basis is mandatory. A crop can be ruined within seven days without sufficient labor to harvest it.

If there is additional costs for labor it will be passed on to the consumer. There is no reason to generate unnecessary additonal costs.

In conclusion, Steinfeld's Products Company and our growers want to comply with the law. We want to grow, harvest, manufacture and distribute our products in accordance with the regulations. We feel, however, that certain modifications are going to have to be made in order to comply.

The 60 day labor shortage requirement needs to be modified or eliminated.

The 50% rule is unrealistic. Every effort must be made to allow anyone the opportunity to work in the field. Every effort must be made to provide adequate labor on a timely basis to the growers.

Steinfeld's Products Company will spend over $2 million dollars for its crops this summer. Over 60% of this value will go into farm labor alone. An additional $2 million will be spent this Summer for manufacturing labor. We are part of a link that uses migrant laborers. It starts in the Spring with strawberry and cherry crops. It goes through the caneberries, hand picked vegetables such as cucumbers and finishes up with apples in the Fall or grapes in California. These crops are vital to the economy of the Pacific Northwest. We want to comply with the law. Our growers want to comply with the law. We are at your disposal to work with you through our trade associations or by ourselves. We are Oregonians. We want to remain food processors in the State of Oregon by working together.

Thank you for the opportunity to express our concerns with the H2A program. We are at your service to work with you and with Congress.

Respectfully Submitted,

H Richard Steinfeld
H. Richard Steinfeld
President
Steinfeld's Product Company

Oregon Legal Services
Corporation

. Michael Dale
Director, Farmworker Program

Please reply:
☒ Weatherly Bldg., Suite 1000
516 S.E. Morrison
Portland, OR 97214
(503) 234-1534

☐ 230 N.E. Second Ave.
Suite A
Hillsboro, OR 97124
(503) 648-7163

Testimony of D. Michael Dale
Director, Farmworker Program
Oregon Legal Services Corporation

Before the Subcommittee on Regulation and Business Opportunities

March 21, 1988

The Subcommittee will undoubtedly hear testimony this morning regarding a crisis in Oregon agriculture caused by the Immigration Reform and Control Act of 1986 (IRCA). While it is true that we are facing substantial changes in the ways in which crops are harvested in Oregon, and some dislocation is being caused by those changes, I would like to try to place the situation in some perspective, from the point of view of a worker advocate, as well as to suggest some actions which could be taken by the federal government to minimize economic disruption caused by changes in the immigration law.

First, it must be realized that problems in securing an adequate labor supply are not being experienced with uniform severity in all sectors of Oregon agriculture. While individual instances of difficulty in obtaining workers could undoubtedly be found in any segment of the industry, most of the state will not suffer severe worker shortage, and the problems with using the existing H-2A program are not as acute for most crops.

The real problem is in strawberries in the Willamette Valley. However, the difficulties of that industry should not be allowed to produce wholesale changes in the law which are not essential to other crops or other areas of the state.

It is important to understand that the current distress of the strawberry industry in Oregon does not stem solely from labor shortages produced by IRCA. Beginning with the crop loss caused by the Mt. St. Helens eruption, the industry has experienced a number of very difficult years during which bad weather and poor prices have caused financial distress. Although 1986 was an excellent year, very high production in 1987 has left prices low and surpluses in storage to depress future prices. Competition from out of the state has been vigorous. Even in the absence of IRCA, the industry would be facing serious problems.

This long-term profit squeeze has left little margin for improvement in the traditionally low wages and poor working conditions encountered in this industry. Oregon Legal Services has represented numerous workers over the past several years in cases involving sub-minimal working conditions and violations of the Fair Labor Standards Act. These cases have arisen predominately in the strawberry industry. In general, the existing housing supply is inadequate. Poor wages and bad conditions have led to a heavy reliance upon alien labor, probably to a degree more extensive than in any other Oregon crop.

Given these realities, meeting the higher standards required in the H-2A program will be difficult for many Oregon berry producers. In addition, some aspects peculiar to strawberry production further limit the utility of the H-2A program in strawberries. The season is short, and unpredictable. If workers aren't available promptly when needed, crop loss occurs very rapidly. However, recruited workers must be provided with minimum guaranteed employment during the contract period. Cost per actual worker-day will be high. Most berry farms are relatively small operations, and will find the application process daunting. The berry season often begins before school ends. This means that students are initially unavailable, and traditional domestic migrant workers are not able to leave base states in time for the beginning of the harvest. Yet, US workers may well become available soon after the beginning of the season, requiring the displacement of H-2A workers. These domestic workers are not perceived by growers to be as productive or reliable over the full season. This creates a strong incentive to discriminate against US workers, which will only lead in turn to litigation.

All of these factors tend to indicate that the H-2A program will not be particularly useful as a source of labor for the strawberry industry. However, even these acknowledged limitations are insufficient reason to recast the H-2A program in any way which reduces the protections afforded to workers under the existing program.

In the first place, most of these problems are unique to a troubled industry. Other farmers in Oregon are paying better wages, provide better working conditions, can better meet outside competition and aren't experiencing labor supply problems to nearly the same degree. However, general changes in H-2A will affect all of agriculture. Sound policy dictates that general working conditions in healthy areas should not be allowed to deteriorate to protect a distressed segment of the agricultural economy.

Further, if the industry is in trouble and needs to be aided, it is fundamentally unfair for the relief to come at the expense of decent minimal working conditions for workers, who are least able to pay the social cost. Other means of assisting strawberry growers are available.

What, then, can be done about the problem of labor shortage in the strawberry industry, short of a fundamental change in the H-2A program? There is probably no one solution to the problem.

It will require a concerted effort by all levels of government, the industry and other concerned entities. However, there are a number of concrete steps which can be taken now.

1. Resolve impediments to Special Agricultural Workers (SAW) legislation

In the development of the IRCA, western growers of soft fruits made many of the same arguments about the unsuitability of the H-2 program which are now pressed upon behalf of the strawberry producers. It was precisely to address these problems that the SAW and Replenishment Agricultural Worker (RAW) provisions were added to the legislation as it finally emerged. The western grower lobby sought these provisions to meet their need for workers in the full realization that the H-2A program would not do so. Now, before the SAW program has run its course, it is premature to conclude that a temporary worker program beyond H-2A is needed.

It is argued that SAW workers will not work in agriculture, or will gravitate to other agricultural jobs which are more attractive. At this point this assertion is entirely speculative. We simply don't know what workers will do. However, we do know that the job opportunities for unskilled, non-English speaking persons will be quite limited. If a sufficient pool of SAWs are legalized before the end of the application period, there will not be enough job opportunities outside of agriculture in the short run to absorb many of these workers. Over the long run, employers will have to compete for labor in ways employers have traditionally done, i.e., by offering better wages and conditions or other incentives. But this is only healthy. No employer in the United States ought to be guaranteed a captive labor force.

It is true that more SAWs were expected to be legalized than seem at this point to be likely to complete the application process. Again, until we approach the end of the application period, we don't know what the number will be. However, the small number of applications thus far is largely the result of the grudging spirit with which the SAW program has been implemented by the Immigration and Naturalization Service (INS). The program was very slow in getting started. Information about legalization has been inadequate. Money to implement public education concerning legalization in the state of Oregon is only now being allocated. The regulations developed by INS have been very burdensome, and documentation requirements severe. INS did not originally support the idea of legalization, and has, in many respects, been a very reluctant implementing agent of Congressional policy. Legislative oversight, and in some areas, legislative mandate, are needed to assure a pool of SAW workers sufficient to accomplish the objectives of the SAW program.

In our experience in litigation over payment of wages it is very nearly the norm that growers in this industry do not have wage records adequate to identify the large number of workers who have worked for them in the past. Congress recognized in adopting IRCA that this problem would exist, and indicated in legislative history that if documentation of qualifying employment did not exist, that the standards of proof articulated in cases under the Fair Labor Standards Act would apply. In the absence of proper records, those cases allow proof of wages by worker testimony and reasonable inference. INS regulations permit only extremely limited use of worker testimony. As a practical matter, grower verification of employment is a virtual necessity. Yet growers who are asked for proof of employment, but lack adequate records, are placed in the extremely awkward position of providing verification and thereby perhaps subjecting themselves to fraud investigation as to facts they cannot prove, or refusing to assist workers. All too many have understandably adopted the latter approach, to the frustration of Congressional intent. Congress should act to effect its original intent that workers be able to prove their qualifying employment using Fair Labor Standards Act standards of proof.

INS has steadfastly refused to exercise its subpoena power in aid of applicants who need work records which do exist, but are not being produced voluntarily. Congress should require INS to do so, unless the applicant's account of his employment is accepted.

The issue of family unity is an extremely important factor in the decision of many workers who are eligible for SAW status, but have opted not to apply. INS has been very coy as to its intent with respect to the status of nonqualifying family members who are in the United States. Legislative provisions assuring reasonable security for family members should be enacted.

The cost of the application process for many workers is simply prohibitive, especially in families where several workers need to legalize their status. One can argue the fairness of attempting to require low-wage workers to bear the full governmental cost of immigrating them. It wasn't so at Ellis Island. The more salient point, however, is that these fees are serving as a significant deterrent to reaching the Congressional goal of an adequate, legalized, western agricultural labor force. Costs to applicants of establishing their status must be cut dramatically.

Workers who have been successful in obtaining legal status under the SAW program are beginning to experience an assessment by IRS of substantial back taxes and penalties to the extent that wages have been reported attributable to them. Of course, if workers could obtain competent tax assistance, it is unlikely that many of them would actually owe a significant amount in taxes. It is even less likely that the IRS will succeed in its attempts to collect much by way of back taxes. The far more likely outcome is that such workers will only be driven back underground, or back to Mexico. Again, this frustrates the objectives of the SAW program, with little gain for the government. Either an informal administrative policy, or a formal legislative tax amnesty should be put into effect.

Finally, since these changes cannot be implemented immediately, and since the deadline for applying for SAW status is fast upon us, extension of the SAW program along the lines being proposed by Senator Cranston should be enacted. Growers will probably need an additional grace period prior to the introduction of employer sanctions in agriculture.

2. Create an adequate supply of farm labor housing

Whether workers are to be recruited from the ranks of domestic farm workers, SAWS or H-2A workers, the lack of an adequate supply of decent quality farm labor housing is a significant obstacle to overcoming the anticipated labor shortage. The Farmers Home Administration has existing program authority to assist in the development of such housing. It should be urged to use its authority on an emergency basis. Business as usual will not suffice. Technical assistance funding is needed, since the infrastructure for creating this housing stock is largely nonexistent. Adequate levels of funding for rental assistance must be provided to make these new facilities financially viable.

Oregon Legal Services stands ready to work with any interested agencies or groups to assist with this undertaking. Congressional assistance in establishing the priority and urgency of this task with the relevant agency officials may be needed.

3. Financial support to the strawberry industry

As is noted at the beginning of this testimony, the strawberry industry in Oregon is undergoing a period of stress accentuated to a degree by shifts in federal policy. To the extent that its labor shortage problem is reflective of its economic inability to afford fair wages and decent working conditions, it is inappropriate to aid the industry by allowing wages and conditions below those determined by Congress to be minimal. If the industry is unable to comply with the law, but should not be allowed to fail, it could be assisted in a number of other ways. For example, the domestic sugar industry would be in a similar situation economically but for price supports. Even short of a formal price support program, the industry could be aided in its current oversupply problem by concerted government purchasing in the military and in the various feeding programs. Intensive varietal research might produce a more competitive product. Reasonable credit policies by agricultural lending agencies can be used to help viable farms survive the dislocations caused by shifting market and labor conditions.

4. Aggressive enforcement of legal standards

While it is noted above that this industry is one in which compliance with legal standards has not been particularly good, there are many excellent strawberry farmers who are trying very hard to provide decent jobs under good working conditions. In general, such farmers will encounter fewer problems in attracting and holding a quality work force. However, these producers should not have to compete with goods produced under substandard conditions. Price, and therefore profit, is related closely to supply. If overproduction, relative to demand, requires that some farmers now growing strawberries produce other products, it should not be the employers who are trying to comply with the law that we lose. However, if the historical pattern of lawlessness in the industry is allowed to persist, the most efficient producers may be those who are most exploitative. A fair but aggressive law enforcement effort has never been in greater need.

5. Enhanced technical assistance in labor recruitment

As Oregon growers have come to rely more heavily on alien labor, the agricultural labor exchange function of the Wagner-Peyser system of state employment agencies has fallen into disrepair. If domestic workers in adequate numbers are to be found for the strawberry industry, they will not be found in the state. This means that efficient and reliable means of recruiting elsewhere must become possible. The system does not work at present. Federal funds pay the cost of these agencies and they must be required to perform effectively in locating qualified agricultural workers. However, since each state agency is subject to local state administration, only forceful intervention by the Department of Labor can give agricultural labor recruitment the resources, the priority and the coordination necessary to get the job done.

In addition, a small farmer ought to have readily available in his or her local employment office the expertise to assist in locating the workforce needed. Recruitment of workers, domestic or H-2A, must be within the means of an average small farmer through the local state employment office. The expensive consultants now required to file an application should not be required. However, the provision of these services by state employment agencies will require a substantial commitment of resources and training to the problem of agricultural labor recruitment. Again, business as usual will not suffice.

These steps, together with the concerted and innovative efforts of the industry and local governments, could go a long way toward easing the crisis which otherwise may occur over the next several years. This kind of approach is far preferable to an expansion of temporary worker programs, or weakening of worker protections in the existing H-2A program. Congress recognized in adopting IRCA that these programs have a tremendous potential for abuse.

The experience of farm worker advocates in states where the H-2 program has been in effect for some time has been that widespread abuses inevitably occur. Attached to this testimony is a listing of some examples of the kinds of worker exploitation which have been shown to have occurred in litigation. Also enclosed is a newspaper account of discrimination against US workers when the H-2 program was introduced in Idaho.

Indeed, we have already seen our first case in Oregon of discrimination against a US worker in the H-2 program. That case, Riesco-Fernandez v. Stringer, Civil No. 87-1316-RE (D.Or. March 8, 1988), involved the refusal of an H-2 employer in Eastern Oregon to hire a qualified US worker for a job filled by a temporary H-2 worker. It was just resolved favorably through payment of damages and entry of a consent decree.

These systemic abuses occur because of the nature of a temporary worker program. Since foreign workers are dependent on one employer for any chance to work legally in the United States, they are ill-situated to raise any complaint about their treatment. They are desperate, docile and reliable workers, who do not complain, do not organize, and will work incessantly. For practical purposes they are the indentured servants of our time. Domestic workers who have the mobility to seek other work, and the security to defend their rights, become far less attractive.

Since individual farmers largely cannot manage to use the program on their own, the locus of decision-making about employment is concentrated in the hands of a few agents of large associations, who do not know the workers and thus share no history or loyalty with them. Even a US worker who can complain about unfair treatment quickly will find that other jobs in the industry will not be available. The current practical remedy to retaliation is simply to find another job elsewhere; this option vanishes.

Another effect of the formation of employer associations to conduct employment functions for large groups of farmers is that the worker loses the little advantage that competition for his labor may now sometimes provide. Since associations take the place of individual farmers in hiring, wage rates are standard, choice about location of work eliminated, and the ability to market one's work elsewhere nonexistent.

These adverse effects occur under the existing program, even with its scant worker protection provisions. Any broadening of the program, or weakening of its protections will only worsen the plight of agricultural workers. Particularly before the SAW program -- which was enacted at the behest of agriculture to solve the very problems we now are experiencing -- has run its course, any such change must be avoided.

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THE HISTORY OF THE H-2 PROGRAM IS A HISTORY OF WORKER ABUSE AND EMPLOYER VIOLATIONS

The temporary foreign agricultural worker program is populated by employers who refuse to comply with worker protection standards. Both domestic and foreign workers have been victims of grower abuses.

The program is now known as the H-2A program after a section created by the Immigration Reform and Control Act of 1986. However, it has existed in substantially the same form for 30 years under the nickname "H-2" program.

Listed below are decisions by courts and administrative agencies in cases brought by workers. They illustrate how protective regulations have been ignored by growers, with the result that domestic workers have been driven out of jobs and replaced by foreign labor, who in turn have been victims of grower abuse. These are merely examples. There are many other cases.

DENIAL OF JOBS TO DOMESTIC WORKERS

Domestic workers are supposed to have priority for the jobs. H-2 growers have worked to deprive U.S. workers of their rights to the jobs.

Montelongo v. Meese, 803 F.2d 1341 (5th Cir. 1986).

In 1977, an association of Texas growers in the Presidio and Redford Valleys contracted to employ about 200 U.S. workers. But as soon as the growers were granted certification to import H-2 workers, they breached the contracts made with the U.S. workers and illegally replaced them with H-2 workers.

Bernett v. Hepburn Orchards, 106 Lab.Cas. ¶34,913 (D.Md. 1987).

35 qualified U.S. workers were illegally denied jobs by a Maryland H-2 employer in 1983 and 1984. The employer used a pre-employment test as a means of screening out the U.S. workers. The court found that the test was "rooted in fantasy," had no relation to job performance, and reflected the grower's bias against domestic workers and in favor of H-2 workers.

Ackerman v. Mount Levels Orchard, Case No. 82-TAE-3 (D.O.L. A.L.J. 1983).

A U.S. worker tried three times in 1980 to obtain employment with a West Virginia H-2 apple grower, but the grower illegally refused to hire him.

Donaldson and Gignac v. Tri-County Labor Camp, Case No. 82-TAE-3 (D.O.L. A.L.J. 1983) and Sejour, v. Tri-County Labor Camp, Case No. 83-WPA-1 (D.O.L. A.L.J. 1985).

Fourteen U.S. workers were illegally turned away by an association of West Virginia H-2 apple growers in 1980. Some were interviewed and denied jobs on a pretense. Others were not even interviewed.

Clayton and Marshall v. Tri-County Growers, Inc., Case No. 87-JSA-5 (U.S.D.O.L., A.L.J. 1987).

In 1983, this association of West Virginia H-2 apple growers closed its operations to U.S. workers while actively recruiting H-2 workers. The ALJ found that the growers had "manifested a pattern of . . . reluctance to hire U.S. workers."

Swanger, et al. v. Fairview Orchards, J.S. Case No. 4630-83-31 (Md. Dept. of Emp. & Training 1984).

A state ALJ ruled that over 50 U.S. workers were illegally denied jobs by a Maryland H-2 grower in 1983. The ALJ found that "[i]t was the employer's stated policy not to carry out the assurances that it had given in its job orders . . . in direct contravention to the requirements of law."

DISCRIMINATION AGAINST U.S. WORKERS

Clarke v. Gardenhour Orchards, Inc., Civil No. JH-84-4419 (D.Md. 1987).

A Maryland H-2 grower refused to provide housing to U.S. migrant workers in 1983, while making housing immediately available to the H-2 workers when they arrived. As as result, the U.S. workers were also denied jobs because they had no place to live near the employer.

Dejean v. Fairview Orchards Associates, J.S. No. 4630-8438 (Md. Dept. Emp. & Training 1985) and Collins v. Fairview Orchards Associates, J.S. No. 4630-8447 (Md. Dept. Emp. & Training 1985).

Twelve U.S. workers were illegally fired from apple picking jobs in 1984 by the Maryland H-2 apple and peach grower. The grower claimed that the workers were fired for low productivity. However, the grower's records showed that H-2 workers had lower productivity but were not fired. Additionally, H-2 workers were given extra training on the job which was not afforded U.S. workers.

The employer also discriminated against U.S. workers in job assignments. H-2 workers were allowed to pick from the ground, while the U.S. workers had to use ladders and get the fruit higher in the trees, slowing down their productivity and reducing their piece rate earnings.

Muncey v. Antonio Levesque & Sons, Inc., Case No 82-WPA-32 (D.O.L. A.L.J. 1983).

A U.S. worker was illegally fired from his job as a logger with an H-2 employer in retaliation for asserting his rights under the job contract and for pursuing a workers' compensation claim. The incident took place in Maine in 1980.

MacArthur v. Beauchesne, Case No. 82-TAE-1 (D.O.L. A.L.J. 1982).

In 1980, a U.S. worker was fired by a Maine H-2 logging firm because the worker's partner was injured on the job.

PAYMENT OF SUB-MINIMUM WAGES

Growers who use the H-2 (now H-2A) system are required to pay a special minimum wage designed to offset the wage depression that would otherwise occur from the influx of a large number of foreign workers. That rate, called the adverse effect wage rate (AEWR), has been higher than the regular federal minimum wage. H-2 growers have been found to violate this requirement.

Virginia Agricultural Growers Association v. Donovan, Civil Action No. 83-0146-D (W.D.Va. 1987).

An association of Virginia H-2 growers failed to comply with court orders regarding wage payments. The growers had refused to pay the AEWR and had unsuccessfully sued in an attempt to reduce the AEWR for Virginia. They then were ordered to pay back wages to bring workers' earnings up to the proper AEWR.

The Court found that U.S. workers were being left off payroll records and so were denied wage protections. The court also found that a grower had paid witnesses to falsely testify that they received the AEWR instead of a lower wage.

Williams v. Tri-County Growers, Inc., 747 F.2d 121 (3rd Cir. 1984).

U.S. workers were paid less than the minimum wage of $3.35 per hour in 1982 when the H-2 employer undercounted the hours they worked. The workers were supposed to have been paid the

AEWR of $3.62 per hour.

DENIAL OF BENEFITS TO U.S. WORKERS

The H-2 regulations require that all workers be provided certain minimum benefits. Among these are free housing and reimbursement of expenses incurred in transportation to the job site.

Ostine v. Tri-County Growers, Inc., Case No. 87-JSA-8 (D.O.L. A.L.J. 1988).

A West Virginia association of H-2 growers refused to pay transportation expenses of U.S. migrant workers who had come from Florida for the job, even though the association was under a federal court order requiring them to comply with all the H-2 regulations. This violation occurred in 1984.

Azor v. Hepburn Orchards, Inc., Case No. 87-JSA-1 (D.O.L. A.L.J. 1987).

U.S. workers and their families were denied housing in 1983 by a Maryland H-2 apple grower. The prevailing practice in the area of intended employment was to provide family housing, so the grower was required to offer it by the regulations. The grower had also misrepresented to DOL that it had no housing suitable for families.

ABUSE OF H-2 WORKERS

H-2 workers are, by regulation, afforded the same protections under state and federal laws as U.S. workers. However, those protections are often ignored by H-2 growers, who instead regard the H-2 workers as mere indentured servants.

Salazar-Calderon v. Presidio Valley Farmers Association, No. P-81-CA-23 (W.D. Tex. 1987).

In 1977 and 1978 Texas H-2 growers intentionally failed to pay H-2 workers the minimum wage. The Court found that "many laborers earned less than one dollar an hour for their onerous, back-breaking labor" because of undercounting of hours worked and illegal deductions.

Jones v. Tri-County Growers, Inc., Case No. 18140 (W.Va. 1988).

The master contract under which Jamaican H-2 workers are imported for apple harvesting requires withholdings of approximately 30% of each H-2 worker's wages, each pay period. The withholdings primarily secure the grower and the Jamaican government against expenses incurred in transporting the workers, or expenses that might be incurred if the worker were fired or jumped the contract.

The West Virginia Supreme Court of Appeals unanimously ruled that the contract violates West Virginia law which limits assignments of wages to no more than 25% of gross periodic earnings. Further, the law has formal requirements which must be met in order for any assignment to be lawful. All the requirements were ignored by the growers. While this case arose from 1980 and 1981, the same violations have occurred each year since that time.

Prepared by: Garry G. Geffert
March 7, 1988

A QUESTION OF FAIRNESS

AMERICA'S EXPANDING GUEST-WORKER PROGRAM

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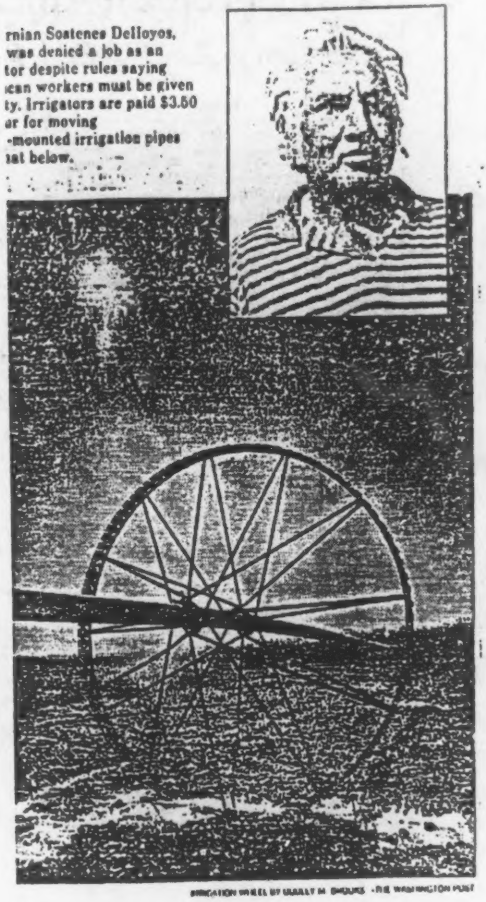

IRRIGATION WHEEL BY [illegible] —THE WASHINGTON POST

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AY, MAY 25, 1987

1st in a series

Preferring Foreign Labor, Farmers Spurn Americans

Law Used to Shield Mexican Field Hands

First of a series

By Loretta Tofani
Washington Post Staff Writer

As far as the law goes, Sostenes DeHoyos had a perfect right to a job last year as an irrigator on Carl and Pattie Nicholson's farm in Kuna, Idaho. But that wasn't enough to help DeHoyos.

DeHoyos had no reason to believe that anything was wrong when he arrived at the Nicholsons' 800-acre farm on a sunny day in May 1986. After all, he had been hired by the Snake River Farmers Association, which was employing men for the Nicholsons and other association members, and he had met all the association's requirements. Not only did he have experience and a reference who could verify his skills, he was willing to accept the arduous split shift that characterizes irrigation labor—working every morning from 5 to 9, and again in the evening from 4 to 8, seven days a week for the duration of the irrigation season.

DeHoyos made his way across the recently planted alfalfa fields to the spot where Carl Nicholson was working with a group of Mexican farm workers. DeHoyos, then 51, a third-generation American who had been a farm worker for 20 years, had traveled 800 miles from his home in California for this job. He was anxious to earn his first paycheck so he could send money to his wife and five children.

The last thing he expected was that Nicholson would tell him to go away. "He said he didn't need me," DeHoyos recalled. "He said he had too many people already."

What DeHoyos did not know was this: He was turned away for a reason he could not change. He was turned away because he was an American.

This odd twist of discrimination was not an isolated case. It happened over and over in the spring of 1986, when Nicholson and 224 other members of the Snake River Farmers Association undertook a campaign to protect about 1,100 illegal Mexican workers who had been com-

See WORKERS, A10, Col. 1

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A1
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U.S. Field Hands Find Themselves Unwanted

WORKERS, From A1

ing north for more than a decade to irrigate their fields.

The way the Snake River farmers saw it, this illegal system was the result of certain economic realities beyond their control. They could not imagine that many Americans would be willing to carry or push 70-pound irrigation pipes from field to field, every morning and every night, with up to eight hours of unpaid idleness in the afternoon, while living in a trailer or bunkhouse with other workers.

Nor could they imagine that Americans would be satisfied with the pay: $3.50 an hour for moving wheel-mounted irrigation pipes or 10 cents a pipe for pipes that had to be carried by hand, which usually meant younger and stronger workers could earn upwards of $5 an hour. For Mexican farm workers, however, the wage was at least seven times what they could earn harvesting crops in Mexico. "The pay isn't great," explained Scott Nicholson, 21. "But for Mexicans the pay is really good."

Other farmers say U.S. workers are less dependable than Mexicans because they have other opportunities. "I know Mexicans aren't going to quit on me for a job in town. I know they're not going to leave me stranded," said Patrick Takasugi, a grain and vegetable farmer.

The system had served the farmers well and they saw no reason to change it—no reason, that is, until U.S. immigration agents arrested an Idaho farmer on charges of paying smugglers to bring aliens into the country and, at the same time, legislators in Washington began talking about curbing the influx of illegal aliens by making it a crime to knowingly hire them.

Worried about their futures, several hundred of Idaho's 24,600 farmers decided to launch a preemptive strike. Under the guiding hand of a Washington consultant, James Holt, these farmers took advantage of a little-known section of the immigration law and turned their illegal Mexican irrigators into legal ones.

The provision in question—the H2 section of the immigration law—was enacted in 1952 as a way to help employers who could prove there was a shortage of American workers willing to do certain jobs. The number of H2 workers grew steadily, peaking at 69,288 in 1970 before declining to 22,831 in 1978 as the government tightened regulations. In recent years, the number has crept higher, partly because of Holt's efforts on behalf of farmers in Montana, Idaho, Oregon, Utah and Nevada. Last year, the government issued 28,014 H2 visas.

The number is expected to increase dramatically over the next five years as the result of last year's immigration law revision. As a trade-off for making it a crime to employ illegal aliens, Congress agreed to allow farmers to make greater use of the H2 program, which the Labor Department said could boost the number of H2 agricultural workers to 250,000 by 1991.

The thrust of the law, however, has remained the same. Foreigners cannot be hired unless Americans and legal aliens (those foreigners with "green cards") do not want the jobs, are not qualified for them or are physically unable to perform the work. Officials also must certify that the employers do not offer below-market wages, thereby depressing the wages of American workers. Several lawsuits have been filed, however—including one involving Caribbean apple pickers in Maryland—alleging that the system doesn't work the way the law states.

What happened in Idaho, based on 40 interviews last year with farmers, workers and government officials, shows that the law can be foiled. It is true, as the farmers maintain, that many Americans were not willing to accept the working conditions and pay offered in Idaho, opting instead for higher-paying jobs elsewhere. It is true as well that some were hired and never showed up for work.

It is also true, however, that some Americans wanted the jobs and were intentionally discouraged—as the following case studies show.

The Case of Sostenes DeHoyos

To make sure that Americans get a fair shot at the jobs, federal regulations require that the job openings be widely advertised. The Snake River association drafted an advertisement, which was sent to 13 states. But many of the ads arrived late—in March; after some Mexican workers already had come north.

DeHoyos heard about the job in mid-April while at an employment office in California. He was looking for a new job, having been laid off from the farm where he had worked the previous summer. A few days later, he took the family's entire $180 in savings, stuffed his work clothes into a shopping bag and headed for Idaho in his 1979 Pontiac Phoenix. Once he arrived, he went directly to the government-run Job Service office in Burley, in south-central Idaho.

There he ran into the first of several obstacles. He learned he couldn't qualify unless he had 30 days of irrigation experience and a reference to prove it—requirements put into the job description to limit the number of Americans who would qualify, according to several farmers involved with the process.

Years before, DeHoyos had worked as an irrigator in Glenns Ferry, a small town about 100 miles west of Burley. But he could no longer remember the name of the farmer. He was determined to find out.

A few hours later, DeHoyos pulled up at the farm's entrance. He found a foreman who remembered him and asked him to phone the Snake River association. "They want to know if I was a good irrigator," DeHoyos explained.

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At that point, the association offered him a job. He was one of 189 Americans hired for the 1,059 available jobs, only nine of whom worked for the entire season—evidence, the association members said, that Americans aren't willing to do the work.

The Nicholsons knew that DeHoyos was coming. Pattie Nicholson delivered the news to her husband one night during dinner. "We got a call from a woman with the Snake River Farmers Association," she remembers saying. "They're sending us some man from California. They say we have to hire him."

"The hell we will," Nicholson says he replied. "Who are they to tell us who to hire?"

Pattie Nicholson said she had forgotten to tell her husband about the form she signed when she sent in their H2 application, promising the federal government they would hire Americans even if foreigners with H2 visas already were working on their farm. She had signed the form on Jan. 1 and barely remembered it, she said.

It was Pattie Nicholson's idea to get H2 visas for their illegal workers. She said that she and her husband were tired of worrying about the Immigration and Naturalization Service's agents, who had twice raided their farm and arrested a half-dozen illegal aliens, throwing the Nicholsons into a panic and prompting them to recruit illegal aliens from other farms—as well as family members—to irrigate the crops. Without regular watering, the Nicholsons said, their alfalfa and bean crop could be damaged or ruined.

During the 15 years they have owned their farm, the Nicholsons have never advertised their irrigation jobs. Asked why, the Nicholsons echoed the statements of other Idaho farmers: Americans just aren't willing to do the hard work of moving irrigation pipes.

When pressed, Pattie Nicholson said Americans might be willing to do such work—for better pay. But, the Nicholsons said, they cannot afford to pay higher wages. In 1985, they said, they lost $378,000 from their various farming operations because of plummeting prices of beans, grain, hay and beef.

So when Sostenes DeHoyos showed up at the Nicholsons' farm one morning, Carl Nicholson already had made up his mind: He was going to stick with his H2 workers, who previously had worked for him as illegal aliens.

"I have my men," explained Carl Nicholson. "I don't have to hire some other dingbat that don't know what they're doing."

DeHoyos protested, but to no avail. Angry, he called the Snake River Farmers Association. An association employe, LaRae Jordan, assured him that he had a job. A few days later, armed with a letter from the association stating that he had been hired to work on the Nicholson farm, DeHoyos returned to the farm. This time he spoke to a foreman, but again was told that no job was available.

Discouraged, DeHoyos went home. "I was mad," DeHoyos fumed. "Driving that far for nothing, spending all that money for nothing."

More than a month later, as required under the H2 guest worker program, the association filed reports with the Department of Labor about the Americans who had been hired. The entry for DeHoyos is brief: "Applicant refused job, had family problems and returned to California."

The Case of David Toll

In the files at the Labor Department, the story of David Toll Jr. seems simple enough: Toll "didn't like the job and quit."

But the reality is more complicated. The reality is that farmer Lloyd Noe discouraged Toll until he quit—something Noe acknowledges.

Toll was just 18, a recent high school dropout. He was trying to find a job so he could rent an apartment. He lived in Fruitland, about 60 miles from Noe's farm in Melba, but he was willing to live in the trailer that Noe maintained on the farm for his irrigators.

Noe said he tried to discourage Toll from the start. They first talked on the telephone May 16, shortly after Toll learned that he had been hired and assigned to Noe's farm by the Snake River Farmers Association. Noe told Toll that he would have to work seven days a week. Toll was surprised. The job description in the state employment office said six days, with the possibility that additional hours "may be offered." Noe also said that Toll would have to bring his own boots; the job description said the farmer would supply boots.

Undeterred, Toll told Noe that he would take the job.

When Toll arrived at Noe's farm at 6:15 a.m. a few days later to start work, Noe was more direct. "I told him the only reason you're here is that I have to give you a chance [because of the federal rules]," Noe recalled. Noe already had three Mexican workers, two with H2 visas and one who was illegal. "He said he preferred to hire Mexicans because they're better workers," Toll said.

Noe drove Toll to one of his bean fields, where the three Mexican workers were moving irrigation pipes. "We have a fat boy here," Noe told the Mexicans. "Let's see if we can get some fat off him." Toll, who is broad-shouldered and stocky, said he took the remark personally. Noe said later he made the remark in jest.

Toll moved pipes for several hours, impressing Noe with his hard work. Toll took orders from one of the Mexican workers; Toll said he felt frustrated because he cannot understand Spanish. At 9 a.m., Noe pulled him off the irrigation work and took him to a field full of rocks and boulders. Noe said he instructed Toll to clear the rocks and then left him there, alone.

"I thought that would get to him," Noe said later.

While he worked, Toll said, he decided to quit. He said he saw no reason to continue working for someone who did not want him. Toll walked to Noe's house and delivered the news.

Noe said later, "I knew he wouldn't last."

The Case of David Betty

David Betty, 30, was as experienced as irrigators come. He knew all three methods of irrigation used by farmers in Idaho: Moving pipes by hand, moving pipes on wheels and gravity-flow irrigation. In the spring of 1986, he heard about the Snake River Farmers Association and applied for a job, noting on his application that he would be willing to relocate but that he needed housing for himself and his wife.

In three previous jobs, Betty and his wife had received housing, rent-free. Farmers often provide their irrigators with housing because of the job's rigorous schedule. But the farmers who belong to the Snake River association were not accustomed to Americans who wanted family housing. Most of them had housed their Mexican workers, who came without their families, in a trailer or barracks.

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Betty received word that he had been hired and assigned to Herbert and Ruby McCowan, who owned an 1,800-acre farm in Dietrich. The McCowans were caught off-guard. "To have someone come out of the clear blue sky and apply for this when we've been using Mexicans since 1965 . . . ," said Herb McCowan.

[illegible] McCowan said she "wouldn't think of" housing Betty and his wife with their Mexican workers. She suggested to Betty that he rent a house elsewhere, but Betty told her he could not afford it.

Finally, Herb McCowan said, "I called [Betty] and asked him why he applied for something like this. I told him he'd be the only white guy here." Betty said he replied, "What do you mean? I'm an irrigator."

McCowan told him that the trailer was the best he could do. Betty said he would look for another job with more suitable housing.

Soon afterward, Betty found another irrigation job through an ad in a local newspaper. "Experienced gravity-flow irrigator, house available," read the ad, which was placed by Art Stuhlberg, a grain and vegetable farmer in Jerome, who said he has never hired an illegal worker for that job.

Stuhlberg said he received about 50 responses to the ad. "It's just a shame the amount of people that's out of work," Stuhlberg said.

In its report to Labor Department, the Snake River association noted simply that Betty "refused job" and had "found other work."

The Case of Clay Tooley

Clay Tooley's problem was different. Tooley's problem was the way in which the Snake River association am [illegible] e Labor Department interpreted the H2 regulations.

Tooley, 16, a high school student who had worked one summer as an irrigator, applied to the Snake River association after seeing a notice at the local Job Service office in Caldwell and was notified in early April that he had been hired.

When he called the farmer to find out about starting work, however, he learned that the farmer needed him to start within a week. Tooley did not get out of school until June. Concerned, he called LaRae Jordan at the association's office.

H2 regulations specify that employers must hire Americans until the "mid-point" of the season, in this case July 1. But Jordan did not tell Tooley that. In an interview, Jordan explained her omission by saying the regulation "does not apply to students." The rules, however, make no reference to exempting students.

When Jordan filed her report on Tooley with the Labor Department, she said, "Tooley refused job because he is still in school and cannot report for work on time."

James Schuelke, a Labor Department official in Seattle, said the department accepted the association's refusal to hire students.

"We've encouraged the association to make every effort to hire [students]," Schuelke said. "But that's tough once they get their foreign workers."

The Case of Edward Funk

Things were looking bleak for Edward Funk, 38, in early 1986. He hadn't worked since August 1985, when he was laid off from his job at a local feed company. He had depleted his savings account, which two years earlier had contained $4,000. Low on money, he had given up his apartment and moved into his father's ranch-style house in a middle-class subdivision of Nampa.

Then, on March 12, 1986, he read about jobs for irrigators in his local Job Service office. Funk had earned $3.50 an hour irrigating crops for a local farmer 20 years ago. He was surprised to see that the pay was still $3.50 per hour. But that didn't deter him.

"I wasn't concerned about the pay," Funk said. "I just wanted a job."

Funk was hired by the Snake River Farmers Association and assigned to Kenneth Cole's farm, 12 miles from his father's home.

Funk reported for work on March 26. He lost the job three days later.

Each day, Cole or his foreman, John Volkers, assigned Funk to carry large, heavy rocks out of the fields that would be irrigated. Sometimes, Funk worked by himself; other times, he worked with four Mexican workers. Three had H2 visas; a fourth was illegal, Cole and Volkers said during interviews.

Funk was a good worker, according to Volkers. Nevertheless, on the fourth day, Cole fired Funk.

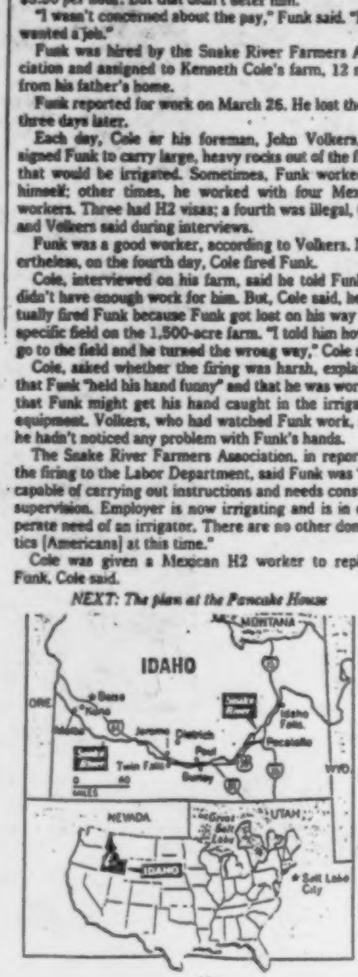
Cole, interviewed on his farm, said he told Funk he didn't have enough work for him. But, Cole said, he actually fired Funk because Funk got lost on his way to a specific field on the 1,500-acre farm. "I told him how to go to the field and he turned the wrong way," Cole said.

Cole, asked whether the firing was harsh, explained that Funk "held his hand funny" and that he was worried that Funk might get his hand caught in the irrigation equipment. Volkers, who had watched Funk work, said he hadn't noticed any problem with Funk's hands.

The Snake River Farmers Association, in reporting the firing to the Labor Department, said Funk was "not capable of carrying out instructions and needs constant supervision. Employer is now irrigating and is in desperate need of an irrigator. There are no other domestics [Americans] at this time."

Cole was given a Mexican H2 worker to replace Funk, Cole said.

NEXT: The plan at the Pancake House



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BY DUDLEY M. BROOKS —THE WASHINGTON POST

High school student Clay Tooley lost out on a summer job last year because the farmer he was supposed to work for insisted that he start before school ended in June. U.S. rules say employers must hire Americans until the season "mid-point"—in this case, July.

BY DUDLEY M. BROOKS —THE WASHINGTON POST

Farmer Kenneth Cole, left, fired an American worker who for three days had been told to haul rocks from irrigation areas. Cole said Edward Funk got lost on the way to one of the fields on his 1,500-acre farm. Cole was assigned a Mexican guest worker to replace the Idaho man he fired.

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BY ANDREW ARENZ FOR THE WASHINGTON POST

David Betty, above, was told that the only housing farmer Herbert McCowan could provide for him and his wife was space in a trailer shared with other field hands. Betty, an experienced irrigator, found another job with a grain and vegetable farmer who gave him use of this house.

Carl and Pattie Nicholson, right, walk on a stretch of their Idaho farm, where they grow alfalfa. Carl Nicholson turned away American laborer Sostenes Delloyos, saying he preferred to keep Mexican guest workers who had worked for him in past years as illegals.

BY DUDLEY M. BROOKS — THE WASHINGTON POST

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A QUESTION OF FAIRNESS

AMERICA'S EXPANDING GUEST-WORKER PROGRAM

Farmers Use Law to Convert Illegals Into Legal Laborers

Second in a series

By Loretta Tofani
Washington Post Staff Writer

RUPERT, Idaho—In the brick Pancake House here, six farmers hunched over a table, sipping coffee and discussing how to deal with the new threat that had suddenly entered their lives.

The farmers didn't mention the source of their fear that morning in December 1984, long after the growing season had ended. They didn't need to. They had been talking about it week after week, month after month, ever since their friend and neighbor, Richard Larry Blincoe, 42, had been arrested and convicted for conspiring to smuggle nine illegal Mexican workers across the border. After pleading guilty, Blincoe was fined $20,000.

For years, many of Idaho's 24,600 farmers had been using illegal aliens to irrigate their fields and pick their crops. They did so openly, secure in the knowledge that it was not a crime to hire an illegal alien. No one talked openly, however, about the money that some farmers illegally paid to "coyotes"—slang for smugglers—to ensure a steady supply of Mexican workers.

Now, with the planting season just a few months away, the six farmers at the Pancake House already were tired from years of fighting with the Immigration and Naturalization Service, tired of the occasional raids that disrupted their operations, tired of looking over their shoulders day after day. Something had to be done.

Larry Garro came up with the idea first. He had just returned from a wool growers' convention, where he had picked up some interesting news: Farmers in Montana, with the help of a consultant in Washington, D.C., had turned some of their illegal workers into legal ones by getting them "temporary guest-worker" visas under the government's little-known H2 program. Maybe the consultant could help them, too?

This is the story of how that consultant, James Holt, and his associates orchestrated a campaign over the last two years that converted 1,800 illegal Mexican irrigators into legal H2 workers, allowing them to stay in the United States for up to seven months under contract to specific farmers, mostly in Idaho. The campaign cost about $300,000: Holt's services, including expenses, cost $85,000.

See WORKERS, A10, Col. 1

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How Farmers Use the Law To Keep Mexican Laborers

WORKERS, From A1

It is a story that underscores the ineffectiveness of the H2 regulations, which are supposed to ensure that foreign workers are hired only if employers cannot find Americans to do the job. Holt showed the Idaho farmers how to deal with those provisions, helping them produce a job description that favored the longtime Mexican workers at the expense of American applicants.

It is also a story that foreshadows the future. Last year, Congress approved an expansion of the H2 guest-worker program as a way of softening its historic decision to make it a crime to knowingly hire an illegal worker. Over the next few years, when many employers are expected to apply for H2 workers to replace the illegal ones they once used, the number of H2 visas is likely to increase significantly from the 28,014 issued in 1986. The La- Department estimates that the number may rise as high as 250,000.

By expanding the H2 program, Congress accepted the argument advanced by the "H2 Coalition," an organization of 20 farming groups that Holt advises. The coalition maintained that employers need a larger supply of foreign labor because Americans are increasingly unwilling to take seasonal jobs, a statement that was disputed on Capitol Hill by people such as Garry Geffert, a lawyer for the Farmworker Justice Fund Inc.

Geffert argued that the H2 program provides benefits to employers while taking jobs from American workers. H2 employers do not have to make Social Security contributions or pay unemployment insurance premiums, as they would if the workers were American. They generally can pay lower wages to foreign workers, who don't have the kinds of choices that American ers might. And they no longer have to worry about the disruption to farm work caused by immigration raids.

At the same time, almost everyone agrees that the regulated H2 program is better for foreign workers than the unregulated system of illegal aliens. Housing is inspected by government officials. And workers cannot be paid less than the minimum wage.

In other ways, the H2 workers in Idaho found that their lives had not changed much from their lives as illegal aliens. The men worked for the same farmers who had employed them previously, doing the same chores, knowing that they had no other job opportunities in the United States.

"The only difference between the H2s and the old system [of illegal aliens] is that the worker doesn't have to look over his shoulder all the time and we don't have to look over our shoulders all the time," said Richard D. Blincoe, the father of the man whose arrest started the H2 movement in Idaho.

Benefits and Pitfalls

It is safe to say that if Blincoe had never pleaded guilty to paying $4,950 to INS agents posing as smugglers of illegal aliens, Idaho farmers might never have called James Holt. Blincoe's arrest in June 1984 rocked the entire farming community. But no one was more shaken than George Grant, a longtime acquaintance who grows sugar beets just a few miles from the Blincoe farm in Paul.

The more Grant talked to other farmers, the more it seemed clear that the H2 program was the only answer. In early 1985, a few months after the meeting at the Pancake House, Grant finally got in touch with Holt in Washington.

"I'm a farmer in Idaho and I'm interested in this H2 program," Grant remembers saying.

They talked about the Blincoe case. "George said, 'Blincoe didn't do anything that any of the rest of us hadn't done,' " Holt recalled. "There but for the grace of God go any of us."

Holt agreed to come to Idaho for a meeting with interested farmers. He explained to Grant that the program had both benefits and pitfalls and that he wanted to make sure that the farmers understood them. He also explained his fee: $1,500 for that trip's expenses, $75 an hour for his time.

After reading Holt's resume, Grant was impressed. Holt, 48, was a former professor of agricultural economics at Pennsylvania State University. He had done consulting work for the Labor and Agriculture departments. He had been working on the H2 issue since 1975 and was the editor of the H2 Bulletin, a monthly newsletter.

In March 1985, Holt flew to Idaho for the first of a series of meetings that Grant arranged. Over the next several months, Holt met with several groups of farmers at various sites throughout the Snake River Valley. He spoke to 20 farmers at a sugar beet processing plant in Paul. He met with 25 farmers at a coffee shop in Blackfoot. He addressed 72 farmers at the Elks Lodge in Rupert.

At each meeting, Holt stressed the same theme: Getting H2 workers is not easy. The Labor Department requires farmers to advertise the jobs in state employment offices and prove to the department that they could not find enough Americans. That was a problem, Holt said, but his experience in Montana showed him that it was not insurmountable.

Most important, he said, was to write a carefully worded job description.

Rather than ask for a general farmhand who knows how to do irrigation work, ask for an "irrigator," he told the farmers. This will tend to discourage most Americans, he said, because irrigation work is arduous and requires working a split shift—four hours early in the morning and then four more hours from late afternoon to sunset.

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Holt also suggested that the farmers require 30 days of irrigation experience and a reference. In an interview, he explained why. If no experience were required, he s[illegible] "there'd be an endless number o[illegible]mericans] who might be willing to put their name down and say, 'I think I want to go to Idaho and be an irrigator.' If you keep getting names, you don't get" H2 guest-worker visas for foreign workers, Holt said.

Some farmers protested, saying they needed general farm workers, too, because their illegal workers had always done other chores in addition to handling the irrigation work. But Holt was firm, according to Tom Hovenden, who attended four of the meetings.

Hovenden, the secretary of Food Producers of Idaho Inc., explained Holt's reasoning in a June 28, 1985, newsletter to Idaho farmers.

Job descriptions "must cover those difficult tasks that American workers generally will not accept," the newsletter told farmers. "If you wrote an attractive offer for ranch hands, a great number of eastern adventurers might apply. This would wreck the job description."

Grant made a similar statement in [illegible] Aug. 7, 1985, letter to intere[illegible] farmers.

He told them that "farmhands" and "ranch hands" are "poor descriptions" because they would bring "numerous applications" from American workers. And that would defeat the purpose of applying for H2 visas because "the employer would never get around to recruiting aliens," the letter from Grant warned.

Border Patrol: A New Ally

Many farmers liked what they heard. They formed an organization, the Snake River Farmers Association, and applied as a group for H2 visas for their illegal workers. Membership fees were set at $250 for joining and $100 for each visa requested.

By August, the association had 100 members. But some farmers were too scared to join. "It's like signing up for a raid by the Border Patrol [the INS division that enforces immigration laws]," Grant tol[illegible]olt. "It's an admission that you[illegible]e illegal aliens."

But Holt knew that the Border Patrol could be an ally; it was common knowledge among H2 experts that the Border Patrol saw the H2 program as a way to reduce the number of illegal aliens. It might help if the farmers could hear the Border Patrol's views firsthand.

Donald Rosenthal, a lobbyist who was working with Holt, had good contacts within the INS. According to Holt, Rosenthal arranged for the head of the Border Patrol, Roger P. (Buck) Brandemuehl, to fly to Idaho for a meeting with a group of farmers.

On Aug. 12, 1985, at the Burley Inn in the farming town of Burley, 150 farmers gathered to hear Brandemuehl, the head of their least favorite government agency. Brandemuehl, who has recently retired, said he remembers the meeting well. It was the first and only time he made a public speech on behalf of the H2 program.

First, he reassured the farmers by promising that the Border Patrol would not use the association's membership rolls as a "hit list" for future raids if the association lost its bid to qualify for the H2 program. Then he stunned them by asking them to apply for H2 workers.

The Border Patrol had better things to do than scurry around Idaho chasing illegal irrigators, Brandemuehl told them. The agency's resources were desperately needed at the border, which was crawling with illegal aliens, drugs and bandits.

"If you use the H2 program, you'll make our job easier," Brandemuehl remembers saying. "Through cooperation, we'll all be winners."

'Mosquitoes Are Prevalent'

In the month after Brandemuehl's visit, membership in the Snake River Farmers Association nearly tripled, to 270 farmers and ranchers, although 45 farmers later decided not to request any visas.

Meanwhile, with the end of the 1985 farming season drawing near, the farmers began telling their illegal workers about the program—even though the association had yet to make a formal application to the Labor Department.

A two-page leaflet, written by Holt, was handed out to illegal irrigators throughout Idaho. "Next year your employer intends to participate in a program that may enable you to legally enter the United States and return to Idaho to work for your employer as an irrigator," the leaflet said.

In December, after the illegal workers had gone back to Mexico, the association made a formal application, requesting permission to hire 1,059 foreign workers on H2 visas. The final job description showed Holt's hand. It asked for irrigators with 30 days of experience who could provide a reference and warned that "work is performed out of doors and will entail extremes of heat, cold, dust rain . . . mosquitoes are prevalent during certain seasons."

The description said workers could expect to do irrigating about 70 percent of the time and do general ranch work during the remainder. For hand-moved irrigation pipes, workers would be paid 10 cents a pipe, with $3.50 an hour guaranteed. For the less strenuous forms of irrigation—wheel-moved pipes and siphon tubes—the pay was a flat $3.50 an hour.

Under H2 regulations, state and federal officials were supposed to conduct surveys to determine whether each of the numerous working conditions and qualifications cited in the application were typical for American irrigation work. Only one survey—on wages—was conducted, but the results were later abandoned because of methodology problems. At the Labor Department's office in Seattle, however, Jim Schuelke raised questions about the experience requirement and the wage the farmers were offering.

It was Schuelke's job to make sure that the association was making a genuine effort to hire qualified Americans. In Schuelke's view, offering $3.50 an hour would discourage American farm workers, who were used to higher wages. And 30 days of experience seemed like far too much.

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Schuelke pressed the pay issue hard. He argued that the association should pay $4.75 an hour—the "adverse effect wage rate" for Idaho. This was bureaucratese for a concept that grew out of abuses in the old bracero program in the early 1960s, when the government found that hiring temporary Mexican workers at low pay tended to depress wages for Americans. To counteract this, the government decided to establish a minimum rate in each state for paying H2 workers.

On Jan. 3, 1986, at Schuelke's urging, the Labor Department rejected the farmers' wage proposal. The farmers appealed, lost their appeal and promised to pay $4.75 per hour if required by Labor Department officials at headquarters in Washington. On April 8, the department published a notice in the Federal Register that worried Holt. It said nearly one-third of the 1,400 illegal aliens arrested in Idaho in 1985 had been paid less than the minimum wage of $3.35 an hour, clear evidence that the use of foreign workers was depressing wages in Idaho. Idaho farmers using the H2 program should pay $4.75 per hour to neutralize the wage depression, the notice stated.

Holt wasted no time. He engineered a letter-writing campaign, getting hundreds of Idaho farmers to write to the Labor Department headquarters official in charge of the issue, Richard C. Gilliland. Holt met with Idaho's two senators, who then contacted Labor Secretary William E. Brock. Holt's efforts paid off, at least temporarily. Brock delayed a decision, saying he wanted to see if the immigration law revision then before Congress would have any effect on the issue. It did.

As it stands now, the farmers probably will have to pay the adverse-effect wage rate to their H2 workers next year. But the rate, as a result of the lobbying effort, has been reduced from $4.75 an hour to $4.15 an hour.

The two-year delay appears to have saved the farmers at least $588 per worker per year and a total of $1.5 million for the entire membership over two years. In 1986, the association hired 870 H2 workers and 189 Americans, although most Americans did not work the entire season.

Meanwhile, the Snake River Farmers Association is growing. It now has 442 members in Idaho, Nevada, Utah and Oregon. This year, it applied for more than 2,000 H2 visas and ended up hiring 300 Americans and 1,800 Mexican H2 workers.

INS officials are pleased. Greg Leo, INS director of congressional and public affairs, said, "The H2 program fits exactly into our immigration policy . . . . INS' job is to keep the borders under control. We want people to act within the law. It's better to have farmers legally bring people in than illegally."

NEXT: At the border

THE BORDER PATROL CHIEF: Roger Brandemuehl

Brandemuehl, who recently retired, stunned farmers in 1985 by urging them to apply for H2 guest workers.

THE LABOR OFFICIAL: Jim Schuelke

At the Labor Department office in Seattle, Schuelke raised questions about the low wage farmers were offering and a 30-day experience requirement.

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THE WASHINGTON POST

A QUESTION OF FAIRNESS

BY DANIEL ELLIS—THE WASHINGTON POST

THE CONSULTANT: James Holt

Holt and his associates orchestrated a campaign that converted 1,800 illegal Mexican irrigators into legal ones with "temporary guest-worker" visas.

BY [illegible]—THE WASHINGTON POST

THE FARMER: George Grant

Shaken by an acquaintance's arrest for conspiring to smuggle illegals, Grant phoned Holt for help, saying: "There but for the grace of God go any of us."

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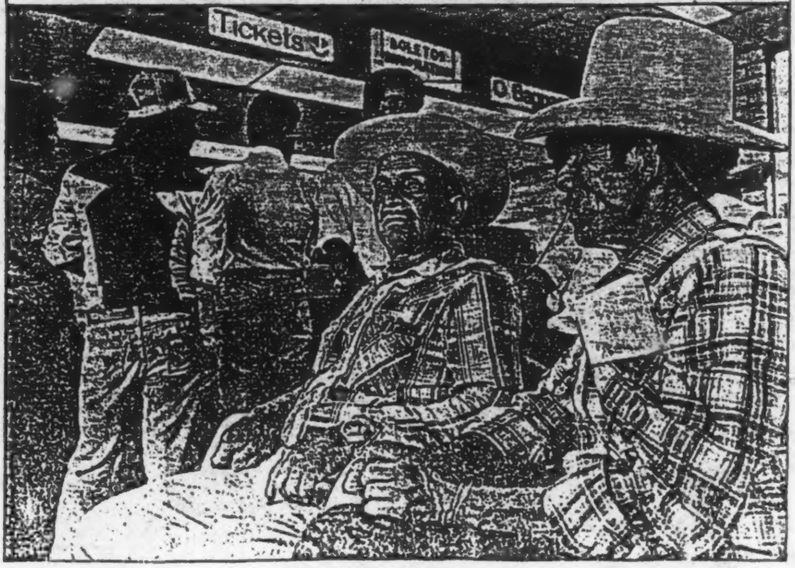
THE WASHINGTON POST

A QUESTION OF FAIRNESS

Gaylen Chandler, above left, working for the Snake River Farmers Association, helped Mexicans obtain "guest worker" visas so they could work legally as irrigators for the same Idaho farmers for whom they had worked illegally in the past. Meanwhile, Juan Acevedo, above right, a Texas Employment Commission counselor, had great difficulty landing irrigator jobs for Texas farm workers. Below, Mexicans Samuel Pacheco and Rafael Garcia wait for their bus to Idaho.



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One's Red Tape Is Another's Red Carpet

Experienced Mexicans Favored Over Americans on Idaho Farms

Last in a series

By Loretta Tofani
Washington Post Staff Writer

NUEVO LAREDO, Mexico—In this border city along the Rio Grande, not far from the sound of U.S. Border Patrol helicopters, 10 Mexicans sat on a long white bench outside the U.S. Consulate, waiting to obtain "guest worker" visas that would allow them to work legally for the same Idaho farmers they had worked for illegally in the past.

There was gray-haired Samuel Pacheco, 58, who was hoping to work once again as an irrigator for farmer Terrence Ketterling, this time legally. There was Guadalupe Torres, 25, who wanted to return to Harold Seeley's farm without getting arrested again. There was Alberto Elizalde Luna, 23, who hoped he could avoid paying $400 to a coyote, or smuggler, to drive him to his job on Patrick Takasugi's farm.

As they sat outside the consulate on that hot, sunny day in late April 1986, they saw no U.S. government officials. They met only with Gaylen Chandler of the Snake River Farmers Association, a group of Idaho farmers trying to convert an illegal work force of 1,059 Mexican irrigators into legal "guest workers" under the little-known H2 provision of the immigration law.

Chandler, 38, a boyish-looking man dressed in a plaid cotton shirt and corduroy jeans, had come more than 1,000 miles to guide the Mexicans through the bureaucratic maze. Sitting at a table on the consulate lawn, Chandler helped them fill out their applications, collected $44 from each of them to cover the visa fee, and then, when all the paperwork was finished, carried it inside the consulate and presented it to U.S. vice consul Sylvie Martinez.

THE GUEST WORKER (H2) PROGRAM

- **ORIGIN**—Section H, subsection ii, of the Immigration and Nationality Act, enacted in 1952. The law permits employers to request temporary work visas if sufficient "unemployed persons capable of performing such service or labor cannot be found in this country."
- **WHO RUNS IT**—The Labor Department administers the H2 Agricultural Labor Certification Program. The department reviews applications from employers, checking that the terms of the job are fair. The department then tests whether Americans are available for the jobs by circulating ads to state employment offices. The department advises the Immigration and Naturalization Service of its findings.
- **HOW THE VISAS ARE ISSUED**—The INS decides whether visas should be issued. The State Department grants the visas at U.S. consulates and embassies.

Applications Limited Americans

While Chandler took the Mexican workers through each step, Americans interested in the Idaho irrigation jobs were finding severe obstacles on the U.S. side of the border. In theory, it was not supposed to work that way. In theory, the Idaho farmers were supposed to seek out and hire qualified Americans first, and then hire foreigners to cover any shortage of American workers. In reality, the H2 system became a legal means of preserving a system that had developed illegally over the course of two decades.

The Snake River farmers fashioned a job description, which was distributed to government job centers in 13 states, that tended to limit the number of Americans who applied for the jobs, according to employment counselors in Texas, California and Idaho. Applicants were required to have 30 days' irrigation experience and a reference who could verify it. Both requirements favored the Mexican workers, who already had performance records with farmers in the association. "It's like any employment situation," Chandler explained. "If you have somebody who has worked for you before, who you know can do the job, you'd rather hire that person."

The Snake River farmers tried to make sure they hired the same Mexican workers they had always used. At the end of the 1985 season, the farmers gave their illegal irrigators a two-page set of instructions, in Spanish, explaining how to apply for an H2 visa. The farmers then "predesignated" those workers, and those names were put on a list that Chandler brought with him to Nuevo Laredo, according to Chandler.

List in hand, Chandler called out to the Mexicans: "*Estan listos?* [Are you ready?]"

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Felipe Guiterrez, 26, came forward, passport in hand. Chandler asked for the name of his Idaho employer. "Señor Seeley," Guiterrez said. Chandler looked down the list and found Guiterrez's name. "I have to make sure the names [of the Mexican applicants] match the names on the employers' list," he said. "If the names dor [illegible] atch, I call the employer to find out if I should send the worker."

Chandler asked others for the names of their employers. Many provided him with odd translations and incomplete information. Pacheco, for example, could not remember the last name of his employer, repeating only "*Terreso, Terreso.*" Chandler scanned his list. Finally, on Terrence Ketterling's list, he spotted Pacheco's name.

After turning over the applications to vice consul Martinez inside the consulate building, Chandler telephoned the Snake River Farmers Association's office in Idaho. "Tell Terry Ketterling that three of his workers are about to leave here," he said. "They're taking the 3:15 bus from Laredo. He can meet them at the Greyhound station in Twin Falls tomorrow at 12:40 in the afternoon."

Later, Chandler picked up the Mexican passports. In each, Martinez had stamped "H2." Chandler went outside to distribute the passports, calling out the name of each man. "Samuel Pacheco! Alfonso Rivera! Maximino Rivera! . . . ."

The Obstacle Course

Two days later, just across the Rio Grande on the American side of the border, Jesus Barrientos, 51, a U.S. citizen and unemployed farm worker, sat in the La[illegible] office of the Texas Employment Commission.

It was Thursday, April 24, 1986. Around Barrientos were dozens of other men and women, all waiting to talk about job prospects with employment counselors on the other side of the room. Barrientos had come to the office because he had heard about the irrigator jobs in Idaho. After a 20-minute wait, he was summoned to the desk of counselor Juan Acevedo.

For more than a month now, ever since the job notice from the Snake River Farmers Association had arrived, Acevedo had been trying to land some of the irrigator jobs in Idaho for several dozen Texas farm workers. He was getting nowhere. He had discussed the job openings with 33 Americans or permanent foreign residents. None had been hired; most were disqualified because they did not have 30 days' experience or because they could not provide the name and address of a reference.

The longer Acevedo worked, the more discouraged he became. He had looked through his files and found the names of 12 men who defined themselves as "irrigators," a sure sign that those workers had irrigation experience. But most said they were not interested because the pay was less than the going rate in other states. (The Idaho farmers said they offered in most cases the same wage they had always paid: $3.50 an hour [illegible] the less physical irrigation methods or 10 cents a pipe for hand-carried pipes, which usually meant a young, strong and industrious worker could earn upwards of $5 an hour.)

But Acevedo had not given up. So when Barrientos, in describing his work history, told him that he had irrigation experience, Acevedo pressed him for more information. When? Where? What kind?

"I did the kind with the hose, it's kind of bent," said Barrientos, referring to siphon-tube irrigation. "In Stanfield, Arizona, a long time ago."

Acevedo pressed further. What was the name of his employer?

Barrientos was silent for a few minutes. "I can't remember his name," he said.

"I'm sorry," Acevedo said. "The employers in Idaho say they need the name and phone number" of a reference.

Acevedo began to think that the Snake River farmers did not really want to hire Americans. The job description seemed to discourage some qualified candidates. Besides, Acevedo said, it was unfair to require 30 days' experience for a job that could be learned in a few days.

Others agreed with Acevedo. A group of Texas migrant farm workers filed suit against the Idaho association, which led to a settlement in which the farmers agreed to set aside 13 percent of their irrigation jobs in 1987 for Americans who could not meet the qualifications.

The wage scale was the main problem for Evaristo Jimenez, one of the most experienced irrigators Acevedo had interviewed for the Idaho jobs.

Born in Mexico, Jimenez had moved to the United States in 1960 and lived here legally ever since. He had 17 years of experience, all of it in Idaho—10 years for farmer Ray Funk and then seven years for Funk's brother, Alan, who had just become a member of the Snake River association.

"I want to move pipes again," Jimenez, 40, told Acevedo.

Like hundreds of other American migrant workers from Texas, Jimenez, 40, his wife Juanita, 37, and their four children used to travel to Idaho every spring.

But in the spring of 1984, Jimenez received a call from his brother, Carlos, who worked for Funk year-round, telling him he did not have a job. Funk, 46, had hired an illegal Mexican worker instead.

In an interview on his farm in Aberdeen, Funk said he fired Jimenez to save money. He said he was paying the Mexican worker, Nicholas Mosqueda, $3.50 an hour—a fraction of what Jimenez earned. Jimenez had been paid on a piece-rate basis: $1.50 to push each of 33 lines of wheel-mounted irrigation pipes, enabling Jimenez to earn between $10 and $15 an hour during his last summer at Funk's farm, according to Funk and Jimenez.

"It's economics," said Funk. "We changed it to an hourly rate because that's what everyone else was doing."

Mosqueda, who still works for Funk, this year was given an H2 visa to work on the farm. Funk and other farmers who applied for the visas for their Mexican workers told the federal government that Americans were not available for the jobs.

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Meanwhile, Jimenez had been unable to find another irrigation job. In the summers of 1984 and 1985, he worked in Minnesota, harvesting sugar beets. But the pay was not nearly as good, leading Jimenez to consult Acevedo.

[illegible]vedo told Jimenez about the Idaho jobs, then read al[illegible] from the description—and, in doing so, made a mistake. He told Jimenez that the only available jobs involved carrying pipes by hand.

Jimenez was discouraged. He had worked with hand-carried pipes, and he knew it was back-breaking work to carry the 70-pound pipes over a distance of 60 feet, eight hours a day.

"How much is the pay?" he asked Acevedo.

"Ten cents a pipe, and a minimum of $3.50 an hour," Acevedo replied.

Jimenez quickly calculated how much he could earn and realized he could probably make no more than $5 an hour. "That's too little," he told Acevedo.

So Jimenez, like Barrientos, went away empty-handed. Acevedo and his boss, Raymond York, had been hopeful the jobs would make a dent in Laredo's 17.1 percent unemployment rate.

Now, their hopes dashed, they lashed out at the "undue restrictions" that the Snake River farmers had placed in the job description.

A Nice Ride to Idaho

"What I hate about this is it's got me spinning my wheels," said York. "We have a lot of unemployed people and we could use our time more fruitfully."

[illegible]nwhile, back on the Mexican side of the border, Samuel Pacheco prepared to cross the Zaragoza International Bridge and enter the United States legally.

Pacheco had crossed the Rio Grande many times before. But he was usually in the water, not on the bridge above it. He has worked in the United States—legally and illegally—for 31 years. In his wallet, he carries an "alien identity card," dated 1956 and issued by the Immigration and Naturalization Service.

Pacheco received the card when he participated in the U.S.-Mexico Bracero program, harvesting lemons, oranges and cotton in California, Texas and New Mexico. When the program ended in 1964 amid complaints that braceros competed with American workers for jobs, Pacheco continued commuting between countries. He worked illegally in the same states in which he had once worked legally, in some cases for the same employers.

Now, Pacheco has come full circle, working legally for an employer for whom he worked last year illegally.

As he entered the INS' three-story cement building on the bridge, he could not help feeling somewhat timid. His passport, bearing his new H2 visa, was stuck in the breast pocket of his blue plaid shirt.

He walked past the seal "Department of Justice, Immigration and Naturalization Service," glanced at the sm[illegible] picture of President Reagan, and hesitantly han[illegible]d his passport to a man in uniform behind the counter.

The agent stamped Pacheco's passport. "*Gracias*," Pacheco said. Smiling broadly, he hurried out of the building.

'Ask When You Want to Know Something'

Half an hour later, Pacheco and 24 other Mexican workers stood in line at the Greyhound bus terminal in Laredo, waiting to buy tickets. Seventeen held H2 visas for jobs in Idaho; eight were heading to jobs in Montana, where a group of farmers had also formed an association to obtain H2 visas for their illegal work force.

At 3 p.m., Chandler entered the terminal and approached the ticket window. "You've sold eight tickets for Montana, is that right?" he asked.

"That's right," said the ticket vendor.

"And 17 tickets for Idaho?"

The ticket seller paused, then agreed.

On the bus, as the men stowed their belongings under the seats, Chandler gave them one last bit of advice.

"You will be in Idaho the day after tomorrow," Chandler told them, in Spanish. "Don't get lost, ask when you want to know something. And stay together. I hope you have a happy trip and arrive safely."

The driver started the engine. Chandler, waving goodbye, disembarked, and the men made the Catholic sign of the cross.

As the air-conditioned bus swooshed along I-35 north from Laredo, the men relaxed, reading comic books, drinking Coca-Colas, smoking cigarettes, chatting, sleeping and gazing out the windows at the flat, parched Texas land dotted with oil rigs.

Most had never had such a pleasant trip to their jobs on Idaho farms. Guadalupe Torres, in the bus' second row, usually jumped over the wire fence near Tijuana and paid coyotes to drive him to Los Angeles, where he would catch a bus.

Two rows behind him, Alfonso and Maximino Rivera, ages 28 and 25, once hid for two weeks in Arizona's deserts and mountains, subsisting on cactus plants. Guiterrez, 26, in the bus' third row, recalled the time he made the 17-hour trip in a car trunk.

"It's nice to see the scenery," Guiterrez said, in Spanish.

Nearly all came from small villages in Mexico, where farm workers earn about 1,500 pesos a day—the equivalent of $1.50. "We have poverty in our country," explained Pacheco, who earns between $200 and $300 a week in the United States, moving pipes by hand at the piece rate of 10 cents a pipe. He sends nearly all of it home, in money orders, to his wife and six children.

As illegal aliens, as well as now, most of the men embarked on their trips knowing they had jobs in the United States.

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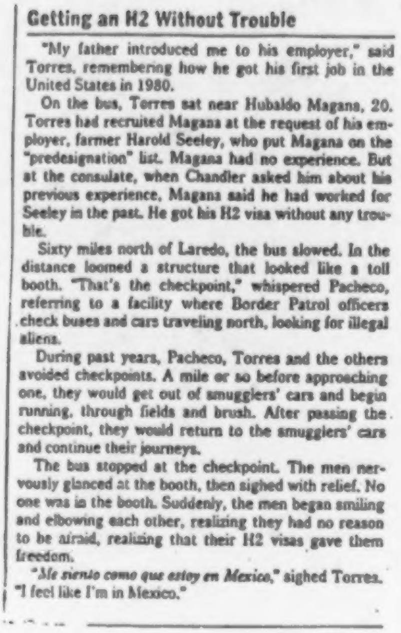

Getting an H2 Without Trouble

"My father introduced me to his employer," said Torres, remembering how he got his first job in the United States in 1980.

On the bus, Torres sat near Hubaldo Magana, 20. Torres had recruited Magana at the request of his employer, farmer Harold Seeley, who put Magana on the "predesignation" list. Magana had no experience. But at the consulate, when Chandler asked him about his previous experience, Magana said he had worked for Seeley in the past. He got his H2 visa without any trouble.

Sixty miles north of Laredo, the bus slowed. In the distance loomed a structure that looked like a toll booth. "That's the checkpoint," whispered Pacheco, referring to a facility where Border Patrol officers check buses and cars traveling north, looking for illegal aliens.

During past years, Pacheco, Torres and the others avoided checkpoints. A mile or so before approaching one, they would get out of smugglers' cars and begin running, through fields and brush. After passing the checkpoint, they would return to the smugglers' cars and continue their journeys.

The bus stopped at the checkpoint. The men nervously glanced at the booth, then sighed with relief. No one was in the booth. Suddenly, the men began smiling and elbowing each other, realizing they had no reason to be afraid, realizing that their H2 visas gave them freedom.

"*Me siento como que estoy en Mexico,*" sighed Torres. "I feel like I'm in Mexico."

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